

NOTE

LEFT AT THE GATE: HOW GATE MONEY COULD HELP PRISONERS REINTEGRATE UPON RELEASE

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Recently, conversations on criminal justice reform have centered around ways to reduce recidivism. Some conversations are focused on the incarceration experience itself and its failure to rehabilitate. Others focus more on the state of and alleviating the structural barriers that recently released individuals face. As made apparent from recent legislation, legislators are concerned with gainful employment for these groups. The First Step Act,¹ one of the most significant pieces of criminal justice reform legislation to address recidivism on the federal level, for example, addresses reform of the incarceration experience as well as the reentry process. The act requires the development of a risk and needs assessment system of all federal prisoners and places them in programs and activities designed to reduce recidivism.² It also amends 18 U.S.C. § 4042(a)(6) to assist inmates in applying for federal and state benefits and obtaining identification.³ What the main components of this legislation, along with different conversations about ways to reduce recidivism, oftentimes overlooks is the immediate needs of the individual upon release. This Note contends that ‘release’ is a distinct phase between incarceration and reentry and that reentry can only be suc-

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¹ First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018).

² *See id.* § 101.

³ *See id.* § 604; 18 U.S.C. 4042(a)(6) (2018). Identification includes a “social security card, driver’s license or other official photo identification, and birth certificate.” *See An Overview of the First Step Act*, FED. BUREAU OF PRISONS, <https://www.bop.gov/resources/fsa/overview.jsp> [<https://perma.cc/5LPJ-AM4U>] (last visited Nov. 7, 2020).

cessful if the individual is truly released. Moreover, this Note argues that current gate money policies fall woefully short of its original purpose. This Note concludes by calling for a re-vamping of gate money policies as an effective method of reintegrating recently released individuals and reducing recidivism.

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INTRODUCTION

When Allen M.⁴ was released from prison on January 14, 2016, he had served twenty-two years and four months in prison for selling crack cocaine. When he walked out, he was given a prepaid debit card of \$190 and a bus ticket back home. From Mendota, California where he was released, his home in Chicago, Illinois was more than two thousand miles away.

Allen felt prepared: he had called his family in Chicago, he had read magazines to keep up with latest technology, and he kept up with the news. In fact, the first thing he did was to buy a cell phone from 7-Eleven. Yet, he was so nervous that he could not bring himself to eat or use the bathroom once he got on the bus. By the time he ate his first meal (he still remem-

⁴ Individuals' names have been changed to protect their identities. Information gathered from personal interviews with the subjects.

bers the turkey sandwich from Subway), Allen was at a rest stop in Denver, Colorado. He also bought a coat and a hat—Denver was cold.

The trip wasn't entirely smooth. His Greyhound bus was delayed, and Allen was not able to make it to his mandated halfway house on time. The probation officer put out a requested warrant for Allen's arrest while he was still on the bus. Without his cell phone to contact his lawyer, Allen would have been arrested without even having the chance to reenter his community.

When Allen arrived at his mandated halfway house, he had spent \$250 on food, clothes, and cell phone minutes. He was fortunate to have a family who was able to send him extra money for his journey home in addition to his *gate money*, an allowance given by the prison to satisfy any immediate needs upon release—in his case, \$190.

Growing up, Allen was a football star who finished high school with honors. When an injury ended his football career, Allen began helping his father and picking up odd jobs. He found it hard to hold down a job, and when his friend introduced him to a lucrative job selling drugs, Allen found it hard to resist. A year later, he was arrested. Allen was twenty-three years old.

During his incarceration, Allen was transferred four times. Allen worked for UNICOR, the federal prison corporation, in three of the institutions. For a while, he built cabinets and made field jackets and ammo pouches for the military. Allen made about 85 cents an hour when he began working, making about \$190 a month. By taking on overtime work and working diligently, he was promoted to the coveted P Grade, making anywhere between \$400 and \$600 a month. A bulk of it went to the commissary, where he would spend his earnings on food, hygiene products, and athletic gear. The prison in Mendota, however, did not have a UNICOR program, and Allen was released without any savings.

Individuals like Allen are released from prison with anywhere from \$0–\$200 in debit cards and a bus ticket, sometimes after decades of isolation.⁵ The lack of support means that individuals are not given the chance to get a job, establish healthy relationships, or simply function normally after decades of incarceration. Often overlooked is the psychological

⁵ See KATE J. WILSON, CTR. FOR PUB. POLICY RES., U.C. DAVIS, STATE POLICIES AND PROCEDURES REGARDING "GATE MONEY" 2 (2007).

turbulence of the first days or weeks, which can be “so debilitating that recently incarcerated people can’t even navigate public transportation; they’re too frightened of crowds, too intimidated or mystified by the transit cards that have replaced cash and tokens.”⁶ Without a network of support and stability during this difficult transition, many individuals recidivate.⁷

It is also becoming increasingly clear that formerly incarcerated individuals face structural barriers that prevent them from succeeding. Race and poverty are, unsurprisingly, deeply linked to incarceration.⁸ Not only do poor minorities tend to disproportionately experience incarceration, but incarceration also effectively prevents economic and social mobility.⁹ Thus, incarceration as a whole ends up playing a critical role in the creation and maintenance of racial and economic inequality.¹⁰ Because “[t]hose who had meaningful economic and social opportunities are unlikely to commit crimes,”¹¹ these conditions are contradictory to and hinder the goals of reentry.

This Note argues that gate money policies can be redesigned to be an effective way of bridging the gap between incarceration and reentry, and that it should be utilized to be so. In doing so, the Note attempts to shed light on a less-often discussed component of reentry as well as some of the continuing issues for some of the most vulnerable group of people in our society.

Part I lays out the history of gate money to illustrate its purpose. Part II details the current legal framework of gate money policies. In providing context for gate money, this Note hopes to demonstrate the disparity between the intended policy and the statutory reality. Part III explains the “revolving door” problem of prisons and factors in issues that newly released

⁶ Jon Mooallem, *You Just Got Out of Prison. Now What?*, N.Y. TIMES MAG. (July 16, 2015), <https://www.nytimes.com/2015/07/19/magazine/you-just-got-out-of-prison-now-what.html> [<https://perma.cc/B3XT-75SJ>].

⁷ See *infra* Part III.

⁸ “Incarceration is disproportionately experienced by poor minorities, particularly young black men with low levels of education.” See David J. Harding, Jeffrey D. Morenoff, Anh P. Nguyen & Shawn D. Bushway, *Imprisonment and Labor Market Outcomes: Evidence from a Natural Experiment*, 124 AM. J. SOC. 49, 52 (2018), http://users.soc.umn.edu/~uggen/Harding_AJS_18.pdf [<https://perma.cc/7M8C-VK7R>].

⁹ See generally BRUCE WESTERN & BECKY PETTIT, THE PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION’S EFFECT ON ECONOMIC MOBILITY (2010), https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf [<https://perma.cc/Z98F-6NKB>].

¹⁰ See Harding, Morenoff, Nguyen & Bushway, *supra* note 8.

¹¹ MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 8 (2010).

people face, such as unemployment, housing, food security, and collateral bans on benefits. In doing so, this Note hopes to highlight why prisoners and society alike would benefit from stronger gate money policy. Part IV then analyzes the shortcomings of, and argues for modifications to, the current gate money framework by reexamining the Transitional Aid Research Project (TARP) and recommending other practical solutions.

I

HISTORY OF GATE MONEY

Reference to gate money can be found as far as back as 1800s England in the form of “release gratuity.”¹² First thought of as charity, gate money was thought to be:

[D]esirable to encourage and develop, for nothing can be imagined more hopeless than the condition of a man cast out on the world with a ruined character and without friends to help him, surrounded by temptations from which he has been long removed, or open to the influence of former evil associates.¹³

In 1862, judges were empowered to grant prisoners gate money from public funds, and prisoners began to be interviewed upon release to “determine their intentions.”¹⁴ They were then given suitable clothing, lodgings, and pocket-money, and members of the community helped obtain employment for them.¹⁵ By 1871, nearly half of men and more than two-thirds of women prisoners were granted gate money.¹⁶

In America, prisons also saw a general reform around this time, based on the so-called “Irish system,” or indeterminate sentencing.¹⁷ Parole and probation grew out of this system in the 1850s, becoming popular in the 1900s.¹⁸ In 1930, Congress established the Bureau of Prisons (BOP) to “manage[]

¹² See SEAN MCCONVILLE, *A HISTORY OF ENGLISH PRISON ADMINISTRATION* 424 (1981).

¹³ *Id.*

¹⁴ *Id.* at 425.

¹⁵ *Id.* at 425.

¹⁶ *Id.*

¹⁷ Edward Lindsey, *Historical Sketch of the Indeterminate Sentence and Parole System*, 16 J. AM. INST. CRIM. L. & CRIMINOLOGY 9, 17 (1925). The philosophy underlying the system was the belief that indeterminate sentencing would incentivize prisoners to work harder and behave well to receive their freedoms sooner, making prisoners responsible for their fate. See *id.*

¹⁸ Roger T. Pray, *How Did Our Prisons Get That Way?*, 38 AM. HERITAGE (1987), <https://www.americanheritage.com/how-did-our-prisons-get-way#6> [<https://perma.cc/36NA-MU7G>].

and regulat[e] . . . all Federal penal and correctional institutions.”¹⁹ From the 1950s to the 1970s, prison systems experienced a shift towards a rehabilitative model.²⁰

In 1962, President John F. Kennedy signed into law the Manpower Development and Training Act to deal with intense national interest in employment following post-World War II depression, generating interest in creating employment opportunities for prisoners.²¹ In the early 1960s, the Manpower Administration studied the post-release work experiences of recently released federal prisoners and found that many individuals left prison with less than \$50 (about \$430 in 2020) and were unable to find employment more than six months after their release.²² As a result, in 1970, the Manpower Administration piloted the first gate money project in Rikers Island, where gate money was 25 cents and a bologna sandwich at the time.²³ After distributing \$60 every week for six weeks to six recently released men, the Administration interviewed the men, who recommended that financial aid should be shorter (13 weeks as opposed to the 26-week period that was under discussion) as to prevent overdependence on the aid, and that they preferred jobs over money.²⁴

At the end of the Rikers study, the Manpower Administration conducted a 1971 survey of gate money by state, which revealed that states generally gave between \$20–\$30,²⁵ while some gave \$50 and very few above \$100.²⁶ About half of all states provided free transportation back to the prisoners’ jurisdiction of arrest.²⁷ “In any case, gate money barely covered a day’s expenses—and at best merely a few day’s.”²⁸ Additionally, prisoners were unable to save in prison because “most

¹⁹ Act of May 14, 1930, Pub. L. No. 71-218, 46 Stat. 325.

²⁰ Michelle S. Phelps, *Rehabilitation in the Punitive Era: The Gap Between Rhetoric and Reality in U.S. Prison Programs*, 45 L. & SOC’Y REV. 33, 36–37 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3762476/pdf/nihms464066.pdf> [<https://perma.cc/A4JQ-C8KL>].

²¹ See PETER H. ROSSI, RICHARD A. BERK & KENNETH J. LENIHAN, MONEY, WORK, AND CRIME: EXPERIMENTAL EVIDENCE 21 (1980).

²² See *id.* at 22.

²³ *Id.* at 22–23. In this project, the Manpower Administration dispensed six weekly checks for \$60 each. At the end of the pilot study, the recipients of the checks endorsed the program and suggested an addition of a work placement program, which led to the LIFE project. *Id.* at 22.

²⁴ *Id.* at 22–23.

²⁵ *Id.* at 25. In about half the states, the correction department supplemented the prisoners’ savings to create \$20–\$30 in savings while others gave a fixed amount. *Id.*

²⁶ *Id.*

²⁷ *Id.* at 26.

²⁸ *Id.* at 25.

prison work paid only 50 cents to \$1.50 a day.”²⁹ A 1975 survey conducted by the American Bar Association showed that while many states increased the amount of gate money to account for inflation it was still not enough to cover expenses beyond a few days.³⁰

That same year, the government began to commission formal experiments to establish the relationship between financial aid, recidivism, and employment.³¹ The first of its kind was the Living Insurance for Ex-Prisoners (LIFE) study³² in Baltimore, Maryland. Results of the study showed that financial aid reduced arrests on charges of theft and that financial aid did not significantly disincentivize recipients from finding gainful employment.³³ Those who received financial aid were more likely to enroll in educational or training programs and had higher paying jobs when employed.³⁴

In 1976, based on the LIFE study, the United States Department of Labor created the Transitional Aid Research Project (TARP).³⁵ TARP provided income support and extended unemployment insurance coverage with the goal of reducing recidivism among released prisoners who had committed property crime.³⁶ Data demonstrated that TARP recipients were less likely to reoffend for property-related crimes than those who did not receive such support.³⁷ However, failure to significantly reduce recidivism halted rehabilitative efforts, and the 1970s marked a shift towards punitive policies and a “nothing works” mentality.³⁸

In the 1980s, the “War on Drugs” became the cornerstone of President Ronald Reagan’s presidency.³⁹ As Cullen re-

²⁹ *Id.* at 25–26.

³⁰ *Id.* at 26.

³¹ *See id.* at 29.

³² In the LIFE study, five hundred prisoners deemed likely to reoffend were, upon release, randomly assigned to experimental and control groups, varying the amount of money they received, depending on employment and job placement assistance they received. *See* Peter Rossi, Richard A. Berk, & Kenneth J. Lenihan, *Transitional Aid Research Project (TARP), 1976–1977*, INTER-U. CONSORTIUM FOR POL. AND SOC. RES. (1992), <https://www.icpsr.umich.edu/web/NACJD/studies/7874> [<https://perma.cc/4C5Z-2ULS>].

³³ ROSSI, BERK & LENIHAN, *supra* note 21, at 37–42.

³⁴ Charles D. Mallar & Craig V. D. Thornton, *Transitional Aid for Released Prisoners: Evidence from the Life Experiment*, 13 J. HUM. RESOURCES 208, 219–21 (1978), <https://www.jstor.org/stable/145359?seq=1> [<https://perma.cc/K5WU-BMZC>].

³⁵ ROSSI, BERK & LENIHAN, *supra* note 21.

³⁶ *Id.* at 3, 7.

³⁷ *Id.* at 12.

³⁸ Phelps, *supra* note 20, at 36–37.

³⁹ President Reagan said made the following statement on the issue:

counted, “When Reagan took office in 1980, the total prison population was 329,000.”⁴⁰ This number doubled to 627,000 by the time he left eight years later.⁴¹ Harsh drug laws in particular created persistent racial and ethnic disparities—although there was no a difference in the rate of drug use, Black Americans are “nearly four times as likely as white Americans to be arrested for drug offenses and 2.5 times as likely to be arrested for drug possession.”⁴² In addition, tough on crime legislation like the Violent Crime Control and Law Enforcement Act of 1994 perpetuated policies that continued to feed the prison system.⁴³

Recently, the focus has turned back towards rehabilitation, and legislators have focused on prisoner reentry programming for the duration of incarceration and for reentry.⁴⁴ The

Our release from the bondage of illegal drug use is being won at the same dear price. The battle is ultimately over what America is and what America will be. At our founding, we were promised the pursuit of happiness, not the myth of endless ecstasy from a vial of white poison.

Ronald Reagan, President of the United States, Remarks at a White House Ceremony Honoring Law Enforcement Officers Slain in the War on Drugs, (Apr. 19, 1988) <https://www.reaganlibrary.gov/archives/speech/remarks-white-house-ceremony-honoring-law-enforcement-officers-slain-war-drugs> [<https://perma.cc/36FS-5B2G>].

⁴⁰ See James Cullen, *The History of Mass Incarceration*, BRENNAN CTR. FOR JUST. (July 20, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration> [<https://perma.cc/87BE-JAHX>].

⁴¹ *Id.*

⁴² Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENT’G PROJECT (June 14, 2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/#IV.%20Drivers%20of%20Disparity> [<https://perma.cc/T6K7-2JFP>]. This is attributed to “policies and practices that drive disparity; the role of implicit bias and stereotypes in decision-making; and structural disadvantages in communities of color which are associated with high rates of offending and arrest.” *Id.*

⁴³ The legislation banned nineteen types of semiautomatic assault weapons, expanded the death penalty, and instituted a federal “three strikes” provision. The bill also granted states \$12.5 billion to build prisons if the state “required [prisoners] to serve at least eighty-five percent of their sentences,” leading to a significant increase in prisons. See Lauren-Brooke Eisen, *The Complex History of the Controversial 1994 Crime Bill*, BRENNAN CTR. FOR JUST. (Apr. 14, 2016), <https://www.brennancenter.org/our-work/analysis-opinion/complex-history-controversial-1994-crime-bill> [<https://perma.cc/PPK2-MZUT>].

⁴⁴ Some recent studies include the Serious and Violent Offenders Reentry Initiative (SVORI), the Center for Employment Opportunities (CEO) Evaluation, and the Joyce Foundation’s Transitional Jobs Reentry Demonstration. All three emphasized job search and employment. See Dan Bloom, MDRC, EMPLOYMENT-FOCUSED PROGRAMS FOR EX-PRISONERS: WHAT HAVE WE LEARNED, WHAT ARE WE LEARNING, AND WHERE SHOULD WE GO FROM HERE? 11 (2006), https://www.mdrc.org/sites/default/files/full_87.pdf [<https://perma.cc/D9EH-S4DQ>].

most recent federal initiatives, the First Step Act⁴⁵ and the Second Chance Act, both aim to reduce recidivism.⁴⁶

One of the most significant pieces of criminal justice reform legislation to address recidivism on the federal level, the First Step Act attempts to address reform from the incarceration experience. The act requires the development of a “risk and needs assessment system . . . to assess the recidivism risk and criminogenic needs of all federal prisoners and to place prisoners in recidivism reducing programs and productive activities.”⁴⁷ It also amends 18 U.S.C. § 4042(a) to require officials “to assist inmates in applying for federal and state benefits and obtain identification.”⁴⁸

The Second Chance Act authorized up to \$165 million in federal grants for programs and services that “work to reduce recidivism and improve [offender] outcomes.”⁴⁹ Nearly half of the \$125 million budget for the Second Chance Act Prisoner Reentry Initiative was dedicated to employment programs for released prisoners.⁵⁰ The National Reentry Resource Center has stated, “Grantees provide vital services—including employment training and assistance, substance use treatment, education, housing, family programming, mentoring, victims support, and other services—to make a person’s transition from prison or jail safer and more successful.”⁵¹

⁴⁵ The First Step Act also targets reentry by reauthorizing the Second Chance Act, which develops guidance for “prisons and community-based facilities to enter into recidivism-reducing partnerships with nonprofit and other private organizations.” See *An Overview of the First Step Act*, *supra* note 3.

⁴⁶ The Second Chance Act purports to provide “support and resources that former inmates need to meet their responsibilities, rediscover their self-worth, and benefit from the gift of a second chance.” Donald J. Trump, President of the United States, Proclamation on Second Chance Month, 2019 (Mar. 29, 2019), <https://www.whitehouse.gov/presidential-actions/proclamation-second-chance-month-2019/> [<https://perma.cc/ZL3Z-P895>].

⁴⁷ See *An Overview of the First Step Act*, *supra* note 3.

⁴⁸ Identification includes a social security card, driver’s license or other official photo identification, and birth certificate. See *id.*

⁴⁹ See *Second Chance Act Grant Program*, NAT’L REENTRY RESOURCE CTR., <https://nationalreentryresourcecenter.org/projects/second-chance-act/> [<https://perma.cc/3JRZ-7FKQ>] (last visited Nov. 8, 2020).

⁵⁰ See Amanda Y. Agan & Michael D. Makowsky, *The Minimum Wage, EITC, and Criminal Recidivism* 7 (Nat’l Bureau of Econ. Research, Working Paper No. 25116, Sept. 2018) https://www.nber.org/system/files/working_papers/w25116/w25116.pdf [<https://perma.cc/V6CM-7C4H>].

⁵¹ THE NAT’L REENTRY RES. CTR., BUREAU OF JUST. ASSISTANCE, THE SECOND CHANCE ACT at 1 (2018), https://csgjusticecenter.org/wp-content/uploads/2020/02/July-2018_SCA_factsheet.pdf [<https://perma.cc/D66C-86VP>].

Despite growing focus on transitional resources, gate money and immediate reentry furnishings have gone ignored since the 1970s.⁵²

II LEGAL FRAMEWORK

The United States prison system operates at both a federal and state level.⁵³ The Federal Bureau of Prisons operate federal prisons for people who have violated federal laws, while state authorities run state prisons for those have violated state laws.⁵⁴ When released from prison, roughly ninety percent of prisons provide individuals with funding, commonly known as “gate money,” to cover immediate needs for reentry.⁵⁵

A. Federal Framework

Pursuant to 18 U.S.C. § 3624(d):

Upon the release of a prisoner on the expiration of the prisoner’s term of imprisonment, the Bureau of Prisons shall furnish the prisoner with—

(1) suitable clothing;

(2) an amount of money, not more than \$500, determined by the Director [of the Federal Bureau of Prisons] to be consistent with the needs of the offender and the public interest, unless the Director determines that the financial position of the offender is such that no sum should be furnished; and

(3) transportation to the place of the prisoner’s conviction, to the prisoner’s bona fide residence within the United States, or to such other place within the United States as may be authorized by the Director.⁵⁶

⁵² ABA, ACTIVITIES OF THE TRANSITIONAL AID RESEARCH PROJECT OF THE COMMISSION ON CORRECTIONAL FACILITIES AND SERVICES (1978), <https://www.ncjrs.gov/pdffiles1/Digitization/74964NCJRS.pdf> [<https://perma.cc/7CEL-JD4C>].

⁵³ *Terms & Definitions: State and Federal Prisoners and Prison Facilities*, BUREAU OF JUST. STATS., <https://www.bjs.gov/index.cfm?ty=tdtp&tid=13> [<https://perma.cc/GD7L-ELUH>] (last visited Nov. 8, 2020).

⁵⁴ *Id.*

⁵⁵ Mia Armstrong & Nicole Lewis, *What Gate Money Can (And Cannot) Buy*, MARSHALL PROJECT (Sept. 10, 2019, 6:00 AM), <https://www.themarshallproject.org/2019/09/10/what-gate-money-can-and-cannot-buy> [<https://perma.cc/B8XQ-SUFT>].

⁵⁶ 18 U.S.C. § 3624(d) (2018).

The BOP allocates gate money to provide prisoners with “appropriate funds based upon the release needs and budgetary and statutory limitations . . . to assist with their immediate release needs.”⁵⁷ In the same document, BOP also stated that it “cannot provide for an inmate’s entire release needs and [a release gratuity] is only intended to supplement other resources that may be available.”⁵⁸

According to BOP’s program statement, “[i]nmates whose offenses were committed prior to November 1, 1987, may be authorized a gratuity of up to \$100.”⁵⁹ On the other hand, those whose offenses were committed after that date “may be authorized a discretionary gratuity of up to \$500, based upon the inmate’s needs.”⁶⁰ Furthermore, unit staff may recommend a release gratuity up to \$250.⁶¹ The warden must approve any recommendations exceeding \$250.⁶²

Some of the factors considered in making a decision include:

- The inmate’s trust fund balance and phone credit balance, if applicable, as both sources of funds are made available to the inmate upon release;
- Community resources (for example: [Community Corrections Center], family, employment, or other public and private assistance programs);
- Immediate release needs such as transportation, clothes, union initiation fees or dues, etc.;
- Available resources of the institution;
- [Inmate Financial Responsibility Program] participation . . . ;
- 6) Inmate spending habits.⁶³

Thus, the provision of gate money is highly discretionary.⁶⁴

⁵⁷ FED. BUREAU OF PRISONS, U.S. DEP’T OF JUST., PROGRAM STATEMENT NO. 5873.06 2 (2003), https://www.bop.gov/policy/progstat/5873_006.pdf [<https://perma.cc/Y9YH-VP6F>].

⁵⁸ *Id.*

⁵⁹ *See id.* (citing 18 U.S.C. § 4281) (2018).

⁶⁰ *See id.* (citing 18 U.S.C. § 3624(d)).

⁶¹ In order to make such a recommendation, unit staff must obtain the Case Management Coordinator’s approval. *Id.*

⁶² *Id.* This is a very rare occurrence. According to data from 1970, the higher range of gate money was limited to about \$83. *See, e.g.*, FED. BUREAU OF PRISONS, U.S. DEP’T OF JUST., USE OF STATUTORY AUTHORITY FOR PROVIDING INMATE RELEASE FUNDS 8 (1974), <https://www.gao.gov/assets/210/200531.pdf> [<https://perma.cc/G4ZH-XRJ6>] (collecting data on release gratuity).

⁶³ FED. BUREAU OF PRISONS, *supra* note 57, at 4.

⁶⁴ “Sound correctional judgement should be applied to the need and approval of a gratuity.” *Id.* at 2.

B. State Framework

State frameworks vary wildly. California provides the most gate money at \$200⁶⁵ while many states provide nothing.⁶⁶ Although gate money is used largely on transportation, food, and other essentials, in most cities, gate money averaged \$53.03, which is insufficient to cover one day's worth of living expenses, especially if offenders do not have housing.⁶⁷ In order to illustrate the differences and the dire need for reevaluation of gate money, it is worth looking at the state with the most progressive gate money scheme and comparing it to those with high incarceration rates in the United States.

1. California

Of the fifty states, California provides the most resources to individuals upon release.⁶⁸ Pursuant to California Penal Code section 2713.1, each prisoner is paid \$200 in addition to any transportation and clothing necessary upon release, the most provided by any state in the United States.⁶⁹ According to the California Code of Regulations section 3075.2(d), gate money is a “sum of money intended for the rehabilitative purpose of assisting in an inmate/parolee’s reintegration into society.”⁷⁰ Gate money is given only to a prisoner who is released to the direct supervision of a parole agent or to an alternative custody program.⁷¹

Upon release, parolees receive the release funds specified in section 2713.1 for six months or more served in a California Department of Corrections and Rehabilitation (CDCR) Institution/Community Correctional Facility.⁷² Parolees who are “serving less than six months in a CDCR Institution/Communi-

⁶⁵ In California, most people receive between \$50–\$100 of their gate money “immediately upon release, and many receive the entire \$200.” PRISON LAW OFFICE, THE PAROLEE RIGHTS HANDBOOK 22 (2013), <https://prisonlaw.com/wp-content/uploads/2015/09/ParoleeManualAug2013.pdf> [<https://perma.cc/BW75-JFSX>].

⁶⁶ Delaware, Idaho, Missouri, New Hampshire, New Jersey, and Wisconsin do not ordinarily provide gate money. See MATTHEW S. CROW & JOHN ORTIZ SMYKLA, OFFENDER REENTRY: RETHINKING CRIMINOLOGY AND CRIMINAL JUSTICE 172–73 (2013); see also *Gate Money by State*, AM. RADIOWORKS <http://americanradioworks.publicradio.org/features/hardtime/gatemoney/> [<https://perma.cc/VS8B-X4KW>] (last visited Nov. 8, 2020).

⁶⁷ Delaware, Idaho, Missouri, New Hampshire, New Jersey, and Wisconsin do not provide gate money. See CROW & SMYKLA, *supra* note 66, at 173.

⁶⁸ Armstrong & Lewis, *supra* note 55.

⁶⁹ See CAL. PENAL CODE § 2713.1; CAL. CODE REGS. tit. 15 § 3075.2(d) (2020).

⁷⁰ 15 CAL. CODE REGS. § 3075.2(d).

⁷¹ *Id.*

⁷² *Id.* Additionally, the CDCR must return all property, including any money in prisoners’ trust accounts, money brought to prison, money earned while in

nity Correctional Facility [are] given a prorated daily rate for each day, or fraction of a day, in custody up to the amount specified in [Section] 2713.1 utilizing the formula:"⁷³

- "Release funds per the amount specified in PC 2713.1 divided by 182.5 days (six months) equals the daily rate rounded to two decimal places."
- "The cost of the following items shall be deducted from the inmate's [gate money] in connection with the inmate's release:"
 - "Release apparel not previously purchased by the inmate or inmate's designee."
 - "Any transportation costs paid by the state."
 - "Clothing and public transportation, if required, shall not be denied due to an insufficient [gate money]."⁷⁴

Parole agents may also provide emergency funds in addition to gate money depending on the circumstances of the prisoner.⁷⁵

2. Louisiana, Oklahoma & Mississippi

Meanwhile, Louisiana, Oklahoma, and Mississippi have the highest incarceration rates in the United States, and yet, provide less gate money than California.

With an incarceration rate of 760 per 100,000 people, Louisiana has the highest incarceration rate in the country.⁷⁶ Yet, according to Louisiana Revised Statute 15:866, prisoners are eligible for a payment that does not exceed the sum of \$20.⁷⁷ Furthermore, while prisoners are generally provided transportation to their residence upon release, prisoners who reside

prison, and money received while in prison (such as gifts or lawsuit settlements). CAL. PENAL CODE § 2085.

⁷³ CAL. CODE REGS. tit. 15 § 3075.2(d) ("Parolees who willfully abscond shall forfeit any remaining [gate money] otherwise due to them. Parolees placed in custody and released from county jail as a result of a parole violation are not eligible for CDCR [gate money].").

⁷⁴ *Id.*

⁷⁵ See CAL. CODE REGS. tit. 15 § 3605(b). There are two types of emergency funds available for prisoners: (1) cash assistance loans (also called "financial assistance funds"), which are loans for amounts not surpassing \$50; and (2) funds for services (also called "bank drafts") of up to \$500 for any over-the-counter purchases. CAL. DEP'T OF CORRECTIONS & REHABILITATION, OPERATIONS MANUAL §§ 81070.1, 81070.2 (2020).

⁷⁶ See E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2016 8 (2018), <https://www.bjs.gov/content/pub/pdf/p16.pdf> [<https://perma.cc/HN6N-VFET>].

⁷⁷ LA. STAT. ANN. § 15:866 (2018).

outside of Louisiana are not eligible for provision of transportation.⁷⁸

Oklahoma, which has an incarceration rate of 708 per 100,000 people,⁷⁹ provides prisoners with clothes and “a railroad or bus ticket to the community of the prisoner,” and up to \$50 if the prisoner does not have at least a credit balance of \$50.⁸⁰

Mississippi has the third-highest incarceration rate,⁸¹ and furnishes the prisoner with clothes, a Mississippi driver’s license or a state identification card that is not a department-issued identification card, a bus ticket within state line, and all money held to their credit.⁸² Additionally, Mississippi provides the following amount in gate money:

- (a) \$15 if the prisoner has continuously served their sentence in one year or less;
- (b) \$25 if the prisoner has continuously served their sentence in more than one and less than ten years flat time;
- (c) \$75 if the prisoner has continuously served their sentence in ten or more years flat time; and
- (d) \$100 if the prisoner has served more than twenty years.

Despite the disproportionately high incarceration rate in these three states, gate money has not been adjusted in the past few decades.⁸³

III

PRISONS AND THE REVOLVING DOOR PROBLEM

A. The Problem

By sequestering offenders for varying periods, prisons aim to protect society through the purported penological goals of retribution, deterrence, and rehabilitation.⁸⁴ Yet, mass incarceration plagues the United States, costing taxpayers \$81 bil-

⁷⁸ LA. STAT. ANN. § 15:866.1 (2018).

⁷⁹ See CARSON, *supra* note 76.

⁸⁰ OKLA. STAT. tit. 57, § 57-513(A) (2019). “Funds necessary to provide said clothing, transportation and [\$50] allowed in subsection A shall be drawn from a petty cash fund established by the Department of Corrections pursuant to Section 513.1” *Id.* § 57-513(B).

⁸¹ CARSON, *supra* note 76.

⁸² MISS. CODE ANN. § 47-5-157 (2019).

⁸³ *Id.*

⁸⁴ See generally Austin MacCormick, *The Prison’s Role in Crime Prevention*, 41 J. CRIM. L. & CRIMINOLOGY 36, 36–48 (1950) (discussing the traditional interests served by prisons and advocating for less focus on retribution specifically).

lion annually.⁸⁵ Among the 45 states that provided data,⁸⁶ the total cost per inmate averaged \$33,274, ranging from a low of \$14,780 (Alabama) to \$69,355 (New York).⁸⁷ Most states ranged from \$25,000 and \$50,000 per inmate.⁸⁸

Despite Herculean efforts to punish criminals, overwhelming evidence shows that prisons do not significantly deter or rehabilitate inmates.⁸⁹ Data from the Bureau of Justice Statistics seems to support this. In 2005, 401,288 state prisoners were released.⁹⁰ Forty-four percent of these individuals “were arrested at least once during their first year after release.”⁹¹ Within nine years, the same group had racked up 1,994,000 arrests, averaging five arrests per released prisoner.⁹² Amongst former federal prisoners, more than a third are rearrested within five years of their release.⁹³ Thus, contrary to the goals of imprisonment, evidence overwhelmingly demonstrates that prisons create crime rather more than prevent it.

⁸⁵ This figure, however, “addresses only . . . cost[s] relating to operating prisons, jails, parole, and probation”; the figure does not account for “policing and court costs, [nor] costs paid by families to [support incarcerated] loved ones.” Matthew T. Mangino, *The Unintended Consequences of Mass Incarceration*, COLUMBIA DAILY TRIB. (Jan. 31, 2020, 8:14 AM), <https://www.columbiatribune.com/opinion/20200131/matthew-t-mangino-unintended-consequences-of-mass-incarceration> [<https://perma.cc/G38U-Y99N>].

⁸⁶ This data represented “1.29 million of the 1.33 million total people incarcerated in all 50 state prison systems” in 2015. See Chris Mai & Ram Subramanian, *Prison Spending in 2015*, VERA INST. OF JUST., [https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending](https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending) [<https://perma.cc/DD7W-ZNQZ>] (last visited Oct. 19, 2020).

⁸⁷ *Id.*

⁸⁸ States with cost-per-inmate estimates of \$50,000 or more include: “Alaska, California, Connecticut, Massachusetts, New Jersey, New York, Rhode Island, and Vermont.” See *id.*

⁸⁹ ALEXANDER, *supra* note 11; see also David J. Harding, Jeffrey D. Morenoff, Anh P. Nguyen, Shawn D. Bushway, & Ingrid A. Binswanger, *A Natural Experiment Study of the Effects of Imprisonment on Violence in the Community*, 3 NATURE HUM. BEHAV. 671, 671 (2019) (finding, in a study of Michigan felons between 2003 and 2015, that a prison sentence had no significant effects on violent crimes after release); Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 CRIME & JUST. AM. 199, 252 (2013) (finding “little evidence that increasing already long prison sentences has a material deterrence effect”).

⁹⁰ MARIEL ALPER & MATTHEW R. DUROSE, BUREAU OF JUSTICE STATISTICS, 2018 UPDATE ON PRISONER RECIDIVISM: A 9-YEAR FOLLOW-UP PERIOD 1 (2005–2014) (2018).

⁹¹ *Id.*

⁹² *Id.* at 7. Released property and drug offenders were more likely to be arrested than released violent offenders; however, released violent offenders were more likely to be arrested for a violent crime. *Id.* at 9, 12. “More than three-quarters (77%) of released drug offenders were arrested for a non-drug crime within 9 years,” and more than a third (34%) were arrested for a violent crime. See *id.* at 1.

⁹³ ALEXANDER, *supra* note 11, at 4.

B. Causes of Recidivism

1. Poverty

Many incarcerated individuals face poverty prior to incarceration. Prisoners “ha[ve] a median annual income of \$19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages.”⁹⁴ Additionally, individuals of all demographics, such as gender, race, and ethnicity, “earned substantially less prior to their incarceration than their non-incarcerated counterparts of similar ages.”⁹⁵ In 2010, over seven hundred thousand prisoners were released, and “incarceration rates for male high school dropouts under age 40 reached 12% for whites and 35% for African-Americans.”⁹⁶ Combined with issues such as “substance abuse, lack of adequate education and job skills, limited housing options, and mental health issues,” reentry often proves to be a complex transition for most offenders.⁹⁷ Thus, “rates of death, risky behaviors, and food insecurity are highest in the first few months after release.”⁹⁸

2. Housing

People who were formerly incarcerated are “ten times more likely to be homeless than the general public.”⁹⁹ For every ten

⁹⁴ See Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-incarceration Incomes of the Imprisoned*, PRISON POLY INITIATIVE (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html> [https://perma.cc/JHA8-GUSB].

⁹⁵ *Id.* Non-incarcerated Black men earned \$31,245, while incarcerated Black men earned \$17,625 prior to incarceration. Non-incarcerated Hispanic men earned \$30,000, while incarcerated Hispanic men earned \$19,740 prior to incarceration. *Id.* Non-incarcerated white men earned \$47,505, while incarcerated white men earned \$21,975 prior to incarceration. *Id.*

⁹⁶ Bruce Western, Anthony A. Braga, Jaclyn Davis & Catherine Sirois, *Stress and Hardship After Prison*, 120 AM. J. SOC. 1512, 1513 (2015), http://users.soc.umn.edu/~uggen/Western_ASR_15.pdf [https://perma.cc/9E3H-D8FX].

⁹⁷ NAT'L RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES 159 (2014).

⁹⁸ Crystal S. Yang, *Does Public Assistance Reduce Recidivism?*, 107 AM. ECON. REV.: PAPERS & PROC. 551, 552 (2017).

⁹⁹ *Formerly Incarcerated People Are Nearly 10 Times More Likely to Be Homeless*, NAT'L LOW INCOME HOUSING COALITION (Aug. 20, 2018), <https://nlihc.org/resource/formerly-incarcerated-people-are-nearly-10-times-more-likely-be-homeless> [https://perma.cc/QF6L-2BAW]. In addition, people of color and women were more likely to be homeless. See *id.* Formerly incarcerated women were homeless at a rate of 264 per 10,000, while formerly incarcerated men were homeless at a rate of 195 per 10,000. *Id.* African Americans and Hispanics were homeless at a rate of 240 per 10,000 and 191 per 10,000, compared to Caucasians, who were likely to be homeless at a rate of 148 per 10,000. *Id.* Finally,

thousand formerly incarcerated people, five hundred seventy were housing insecure.¹⁰⁰ Minority women were also disproportionately more likely to reoffend because of their increased susceptibility to homelessness.¹⁰¹

Housing issues are exacerbated by the fact that formerly incarcerated individuals are more likely to suffer from substance abuse, mental illnesses, and other obstacles that “can impede their search for safe, stable, good-quality housing.”¹⁰² Furthermore, landlords routinely discriminate against formerly incarcerated individuals.¹⁰³ For example, in high-cost markets, “landlords can legally limit lessees’ opportunities to secure housing” and the “demand for affordable housing is great.”¹⁰⁴

Formerly incarcerated individuals who struggle to obtain stable housing are more prone to recidivism.¹⁰⁵ In fact, the Returning Home Ohio Pilot Project showed that “participants receiving supportive housing services were 40 percent less likely to be rearrested.”¹⁰⁶

individuals who had a history of incarceration were more likely to be homeless at a rate of 279 per 10,000. *Id.*

¹⁰⁰ Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POLY INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html> [<https://perma.cc/64YD-SEJS>].

¹⁰¹ See *id.*; see also Tanvi Misra, *The Homelessness Problem We Don’t Talk About*, BLOOMBERG: CITYLAB (Aug. 16, 2018, 3:01 PM), <https://www.citylab.com/equity/2018/08/the-homelessness-problem-we-dont-talk-about/567481/> [<https://perma.cc/2ZJ6-L2PD>] (“PPI’s data suggests that women of color experience the highest rates of homelessness—as seen within homeless shelters and on the streets.”).

¹⁰² Kimberley Burrowes, *Can Housing Interventions Reduce Incarceration and Recidivism?*, HOUSING MATTERS (Feb. 27, 2019), <https://housingmatters.urban.org/articles/can-housing-interventions-reduce-incarceration-and-recidivism> [<https://perma.cc/B85J-77Z6>]. See generally Seena Fazel, Adrian J. Hayes, Katrina Bartellas, Massimo Clerici & Robert Trestman, *The Mental Health of Prisoners: A Review of Prevalence, Adverse Outcomes and Interventions*, 3 LANCET PSYCHIATRY 871 (2016) (studying risk factors associated with mental health of prisoners); Carol S. North, Karin M. Eyrych-Garg, David E. Pollio & Jagadisha Thirthalli, *A Prospective Study of Substance Use and Housing Stability in a Homeless Population*, 45 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 1055, 1055 (Nov. 2010) (finding that course of certain substance abuse “was associated with subsequent attainment of stable housing”).

¹⁰³ See Veronica Gaitán & Maya Brennan, *For Reentry Success and Beyond, Rental Housing Access Matters*, HOUSING MATTERS (Feb. 6, 2019), <https://housingmatters.urban.org/articles/reentry-success-and-beyond-rental-housing-access-matters> [<https://perma.cc/729T-W3VJ>] (citing report finding that seventy-nine percent of a group of formerly incarcerated people were ineligible for or denied housing due to conviction history).

¹⁰⁴ Burrowes, *supra* note 102.

¹⁰⁵ Couloute, *supra* note 100.

¹⁰⁶ Burrowes, *supra* note 102.

3. Unemployment

On average, state prisoners released in 2016 spent 2.6 years in prison from initial admission to initial release.¹⁰⁷ Violent offenders served, on average, 4.7 years in state prison.¹⁰⁸ In federal prison, 50.7% of individuals spend more than 10 years in prison.¹⁰⁹ Effectively withdrawing these individuals from the labor market depreciates human and labor capital.¹¹⁰ For those who need to support a family or do not have a strong support system, it can be nearly impossible to make an income.

Upon release, the unemployment rate for formerly incarcerated people is over 27%.¹¹¹ They are offered half as many jobs as those without criminal records—African American applicants receive 66% fewer offers.¹¹² Even for those who do manage to find a job, formerly incarcerated men earn 11% lower hourly wages, 9 weeks less in terms of annual employment, and 40% lower total annual earnings.¹¹³ In addition, employment chances decrease for formerly incarcerated African American or Hispanic applicants.¹¹⁴ Women of color, in particular, are hard-hit.¹¹⁵

¹⁰⁷ DANIELLE KAELE, BUREAU OF JUSTICE STATISTICS, TIME SERVED IN STATE PRISON, 2016 1 (2018), <https://www.bjs.gov/content/pub/pdf/tssp16.pdf> [<https://perma.cc/6HL5-PURP>].

¹⁰⁸ *Id.* at 2.

¹⁰⁹ See U.S. SENTENCING COMM'N, QUICK FACTS: FEDERAL OFFENDERS IN PRISON 2 (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/BOP_Feb2017.pdf [<https://perma.cc/HU6T-53QS>].

¹¹⁰ Robert Apel & Gary Sweeten, *The Impact of Incarceration on Employment During the Transition to Adulthood*, 57 SOC. PROBS. 448, 452 (2010).

¹¹¹ See Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, PRISON POLY INITIATIVE (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html> [<https://perma.cc/YAL9-KC8C>]. This eclipses the total U.S. unemployment, ever, including the Great Depression. *Id.*

¹¹² WESTERN & PETTIT, *supra* note 9, at 22.

¹¹³ *Id.* at 4. In addition, the median income for people within one year of their release is just above \$10,000. See Adam Looney & Nicholas Turner, *Work and Opportunity Before and After Incarceration*, BROOKINGS INST. (Mar. 14, 2018), <https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/> [<https://perma.cc/AA77-M6CQ>].

¹¹⁴ Black applicants *without* a criminal record are called back at lower rates (fourteen percent) than white applicants *with* a criminal record (seventeen percent). A criminal record is thus more detrimental to Black applicants. See *Understanding Policies that Impact Employment Opportunities for People Who Have Criminal Records*, NAT'L REENTRY RESOURCE CTR., <https://csgjusticecenter.org/nrrc/employment-opportunities-for-people-with-criminal-records/>.

¹¹⁵ See Couloute & Kopf, *supra* note 111. While a criminal record affects white men by fourteen percentage points, Black women see a jump by thirty-seven percentage points when compared to their general population peers. *Id.*

Formerly incarcerated individuals also face economic immobility. Two-thirds of the former inmates who were in the bottom 20% of the male earnings distribution in 1986 remained on the bottom rung in 2006, double the amount of those who were never incarcerated.¹¹⁶ While 15% of men who started in the bottom fifth made it to the top fifth within 20 years, only 2% of those who were at one point incarcerated managed to do the same.¹¹⁷

Recently released individuals face the stigma of a criminal history, which is “an insurmountable obstacle” in searching for employment¹¹⁸ Yet, at the same time, nearly one-third of the adult working-age population now have some sort of a criminal record.¹¹⁹ This perpetuates a toxic cycle of release and poverty, thus hurting not just formerly incarcerated people, but also employers and the taxpayers.

4. *Other Collateral Bans*

More than 44,000 collateral consequences have been established,¹²⁰ “includ[ing] civil law sanctions, restrictions, or disqualifications that attach to a person because of the person’s criminal history and can affect the person’s ability to function and participate in society.”¹²¹ Collateral consequences, coupled with laws and regulations, restrict freedoms and opportunities for formerly incarcerated individuals well beyond the formal sentencing framework and reinforce social stigma.¹²² This marginalizes those who have already served their sentences and denies them access to the mainstream economy.¹²³

Since 1996, the U.S. government has banned people with drug-related felonies from participating in the Supplemental

¹¹⁶ WESTERN & PETTIT, *supra* note 9, at 16.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 22. A new study found that while “just 14% of [human resources] professionals say that they would be unwilling to hire those with criminal records,” formerly incarcerated Americans do face additional scrutiny during the hiring process. See SOC’Y FOR HUMAN RESOURCE MGMT. & CHARLES KOCH INST., WORKERS WITH CRIMINAL RECORDS (2018), https://www.prisonpolicy.org/scans/cki_shrm/report.pdf [<https://perma.cc/F6P9-WGV7>].

¹¹⁹ See Gary Fields & John R. Emshwiller, *As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime*, WALL STREET J. (Aug. 18, 2014, 10:30 PM), <https://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-lifetime-1408415402> [<https://perma.cc/7RPS-ZZ5H>].

¹²⁰ See U.S. COMM’N ON CIVIL RIGHTS, COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES 1 (2019).

¹²¹ *Id.*

¹²² See *id.* at 11.

¹²³ ALEXANDER, *supra* note 11, at 4.

Nutrition Assistance Program (SNAP)¹²⁴ or Temporary Assistance for Needy Families (TANF),¹²⁵ forms of cash assistance that reentry advocates say can help people get back on their feet and feed their families after getting out of prison.¹²⁶ Currently, South Carolina and West Virginia still enforce a full lifetime ban on SNAP,¹²⁷ also known as food stamps, for individuals convicted of drug felonies.¹²⁸ Several states¹²⁹ maintain a full ban on TANF for individuals convicted of drug felonies.¹³⁰

Most states have opted out of TANF restrictions or imposed more lenient restrictions through a modified ban, such as:

- 1) limiting the circumstances in which the permanent disqualification applies (such as only when convictions involve the sale of drugs);
- 2) requiring the person convicted to submit to drug testing;
- 3) requiring participation in a drug treatment

¹²⁴ See generally *Supplemental Nutrition Assistance Program (SNAP)*, FOOD & NUTRITION SERV., <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program> [https://perma.cc/M54P-EQSB] (last visited Nov. 9, 2020) (discussing the SNAP program).

¹²⁵ See generally *Temporary Assistance for Needy Families (TANF)*, OFF. FAM. ASSISTANCE, <https://www.acf.hhs.gov/ofa/programs/tanf> [https://perma.cc/W4AX-76XE] (providing information on the TANF program).

¹²⁶ See, e.g., DARREL THOMPSON, CLASP, *NO MORE DOUBLE PUNISHMENTS: LIFTING THE BAN ON SNAP AND TANF FOR PEOPLE WITH PRIOR FELONY DRUG CONVICTIONS 1* (2019). <https://www.clasp.org/sites/default/files/publications/2019/04/2019.03.15%20No%20More%20Double%20Punishments.pdf> [https://perma.cc/3Q9K-D7KJ] (arguing that all states imposing barriers to SNAP and TANF should remove them).

¹²⁷ See Molly Born, *In Some States, Drug Felons Still Face Lifetime Ban on SNAP Benefits*, NPR (June 20, 2018, 10:02 AM), <https://www.npr.org/sections/thesalt/2018/06/20/621391895/in-some-states-drug-felons-still-face-lifetime-ban-on-snap-benefits> [https://perma.cc/LS99-3ZGH].

¹²⁸ Mississippi lifted its ban in 2019. See *Mississippi: Food Aid OK for People with Drug Convictions*, ASSOCIATED PRESS (May 2, 2019), <https://apnews.com/fa685dc9181c4de39e471e05d7ab7192> [https://perma.cc/7A5K-834N]. Indiana's ban ended earlier this year. See Mark Peterson, *Indiana Food Stamp Ban for Drug Felons Nears Its End*, WNDU 16 NEWS NOW (Dec. 17, 2019, 4:14 PM), <https://www.wndu.com/content/news/Indiana-food-stamp-ban-for-drug-felons-nears-its-end-566284431.html> [https://perma.cc/RQJ2-DB65].

¹²⁹ Arizona, Missouri, Alaska, Texas, Mississippi, Illinois, Nebraska, South Carolina, South Dakota, Georgia, Delaware, Virginia, and West Virginia ban all individuals convicted of drug felonies from TANF. Eli Hager, *Six States Where Felons Can't Get Food Stamps*, MARSHALL PROJECT (Feb. 4, 2016, 7:15 AM), <https://www.themarshallproject.org/2016/02/04/six-states-where-felons-can-t-get-food-stamps> [https://perma.cc/Z9UH-AQRQ].

¹³⁰ California, Delaware, Kansas, Maine, Michigan, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Vermont, and Wyoming do not have any bans for individuals with felony convictions. *Id.*

program; and/or 4)imposing a temporary disqualification period [for those who violate parole].¹³¹

Yet, 91% of individuals released from prison face food insecurity.¹³² TANF and SNAP are critical programs that help people meet their basic needs and they already provide stringent guidelines to qualify. Only some low-income families with dependent children are eligible for TANF cash assistance. Additionally, the median amount of benefits for a family of three without income is a meager \$492 a month.¹³³ Similarly, SNAP benefits average \$378 a month for a family of three for food purchases at approved retailers (not restaurants).¹³⁴

This is an issue, as “successful reintegration of incarcerated individuals into society hinges on providing robust social support services” and “eliminating structural barriers,” which the current system fails to do.¹³⁵ Economic stability created by these services reduce the likelihood of recidivism.¹³⁶

Consider Allen’s both modest and incredibly successful re-entry. Allen had \$190 and a bus ticket back to Chicago upon his release. But he also needed, and was fortunate enough to have, much more than that. He had a family who helped finance him upon his release; and he had a cell phone, which was critical for him to communicate with his lawyers who helped him talk to his probation officer. Once he returned to Chicago, his support system connected him to social services, which in turn trained and helped him get a job as a car servicer for the Chicago Transit Service at the O’Hare Airport. He drives thirty-one miles five times a week to get to work and cleans subway cars from 5:00 AM to 1:30 PM.

¹³¹ See PROGRAM DEV. DIV., U.S. DEP’T OF AGRIC., SNAP STATE OPTIONS REPORT 18 (2017), https://fns-prod.azureedge.net/sites/default/files/snap/13-State_Options-revised.pdf [<https://perma.cc/NWZ7-MYJ3>].

¹³² See Emily Wang, Gefei A. Zhu, Linda Evans, Amy Carroll-Scott, Rani Desai & Lynn E. Fiellin, *A Pilot Study Examining Food Insecurity and HIV Risk Behaviors Among Individuals Recently Released from Prison*, 25 AIDS EDUC. & PREVENTION 112, 118 (2013).

¹³³ Ali Safawi & Ife Floyd, *TANF Benefits Still Too Low to Help Families, Especially Black Families, Avoid Increased Hardship*, CTR. ON BUDGET & POL’Y PRIORITIES (last updated Oct. 8, 2020), <https://www.cbpp.org/research/family-income-support/tanf-benefits-still-too-low-to-help-families-especially-black>.

¹³⁴ See *A Quick Guide to SNAP Eligibility and Benefits*, CTR. ON BUDGET & POL’Y PRIORITIES (Sept. 1, 2020), <https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits> [<https://perma.cc/XB3C-FGJG>].

¹³⁵ See *Ensuring Financial Stability for Ex-Convicts Reduces Rates of Recidivism*, USC SUZANNE DWORAK-PECK SCH. OF SOC. WORK (Oct. 3, 2019), <https://dworakpeck.usc.edu/news/ensuring-financial-stability-for-ex-convicts-reduces-rates-of-recidivism> [<https://perma.cc/S4XU-U9XM>].

¹³⁶ “Research suggests that criminal behavior is very responsive to earnings, and to a lesser extent employment.” *Id.*

Even in the best of circumstances, this is what is required for prisoners to succeed upon release: a wide network of resources. And that is largely what determined Allen's success. Yet, those who are released from prison face a multitude of issues like the issued Allen faced and oftentimes have to deal with them alone. Keeping in mind these circumstances, this Note contends that a modest first step in addressing these issues begins by providing immediate financial support for these individuals.

IV

RECOMMENDATIONS

A. Gate Money Should Be Updated to Account for Inflation and In-Prison Spending Power

BOP guidelines have stated that the amount of gate money should assure "sufficient funds to frugally provide for his needs for 1 week."¹³⁷ Yet, most statutes regarding gate money are outdated. For example, since 18 U.S.C. § 3624(d) was enacted in 1984, the gate money amount has remained unchanged.¹³⁸ Yet, when accounting for inflation, \$100 in 1984 is now worth about \$253 in 2020.¹³⁹ Thus, the \$250 that federal prisoners receive on average would be about \$630.¹⁴⁰ Even California has failed to increase its \$200 gate money since 1973,¹⁴¹ worth about \$1,200 today.¹⁴²

By updating gate money,¹⁴³ released individuals would have a better chance at reintegrating upon release. As of the writing of this Note, the current cost of monthly living expenses for a single person in the United States averages \$2,629.¹⁴⁴

¹³⁷ See FED. BUREAU OF PRISONS, *supra* note 62, at 3.

¹³⁸ 18 U.S.C. § 3624(d) (2018) (reference to legislative amendments since enactment).

¹³⁹ See *CPI Inflation Calculator*, U.S. BUREAU LAB. STATS., https://www.bls.gov/data/inflation_calculator.htm [<https://perma.cc/Q6SB-XMRP>] (last visited Oct. 24, 2020) (input "100.00"; then select "March 1984," followed by "September 2020"; then click "Calculate").

¹⁴⁰ *Id.* (input "250.00"; then select "March 1984," followed by "September 2020"; then click "Calculate").

¹⁴¹ CAL. CODE REGS. tit. 15, § 3075.2(d)(8) (2020) (reference to legislative amendments since enactment).

¹⁴² *CPI Inflation Calculator*, *supra* note 139.

¹⁴³ The average amount of gate money is \$50. See Armstrong & Lewis, *supra* note 55.

¹⁴⁴ *Cost of Living in United States*, EXPATISTAN, <https://www.expatistan.com/cost-of-living/country/united-states> [<https://perma.cc/L7V9-YV77>] (last visited Oct. 24, 2020).

The average price of a single fast food meal is about \$7,¹⁴⁵ the cost of an average bus ticket is \$88;¹⁴⁶ and the cost of a cheap cell phone plan can be as low as \$10 a month.¹⁴⁷ The monthly cost of living in the fifteen largest cities in the United States averages \$3,486.¹⁴⁸ Under current gate money policies, a prisoner released from Louisiana, Oklahoma, or Mississippi would have enough money for about half a day if he or she did not have a support network upon release.¹⁴⁹ Thus, states should calculate the decreasing purchasing power of their gate money and amend its statutes accordingly so that released individuals are able to meet their immediate needs.

Additionally, while many states use the prisoners' savings to supplement gate money, most prisoners do not have any meaningful source of income. According to the 2005 Bureau of Justice Statistics census of the prison population, 88% of the nation's prisons had implemented work programs.¹⁵⁰ As of 2017, the average minimum daily wage for non-industry prison jobs was 86 cents,¹⁵¹ while the average maximum daily wage was \$3.45 for the same.¹⁵² About 6% of people incarcerated in state prisons earn slightly higher wages, between 33 cents and

¹⁴⁵ See Ashley Lutz, *How Much It Costs to Eat at Every Major Fast Food Chain*, BUS. INSIDER (Sept. 4, 2015, 4:18 PM), <https://www.businessinsider.com/cost-to-eat-at-every-major-fast-food-chain-2015-9> [<https://perma.cc/3JGT-7HB5>].

¹⁴⁶ See *Overview: United States Bus Travel Info*, WANDERU, <https://www.wanderu.com/en-us/bus-tickets/us/#:~:text=%2489.00%20is%20the%20average%20price%20of%20a%20bus%20ticket%20in%20United%20States> [<https://perma.cc/FFC9-PHDT>] (last visited Oct. 12, 2020).

¹⁴⁷ Tina Chang, *The Best Cheap Cell Phone Plans 2020*, WHISTLEOUT (Oct. 1, 2020), <https://www.whistleout.com/CellPhones/Guides/best-cheap-cell-phone-plans> [<https://perma.cc/4SKT-M7QR>].

¹⁴⁸ See Kathleen Elkins, *Here's How Much It Costs a Single Person to Live in the 15 Largest US Cities*, CNBC (Mar. 22, 2018, 9:31 AM), <https://www.cnbc.com/2018/03/22/how-much-it-costs-a-single-person-to-live-in-the-15-largest-us-cities.html> [<https://perma.cc/SPE3-ZCNK>].

¹⁴⁹ See *supra* section II.B.2.

¹⁵⁰ See JAMES J. STEPHAN, U.S. DEP'T OF JUSTICE, CENSUS OF STATE AND FEDERAL CORRECTIONAL FACILITIES, 2005 5(2008), <https://www.bjs.gov/content/pub/pdf/csfef05.pdf> [<https://perma.cc/85EV-SQG4>].

¹⁵¹ See Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, PRISON POLY INITIATIVE (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/> [<https://perma.cc/5D5X-QWKZ>]. The majority of the work includes "custodial, maintenance, grounds keeping, or food service jobs." *Id.*

¹⁵² *Id.* Wages have gone down since 2001 when the average minimum wage for non-industry prison jobs was 93 cents and while the average maximum daily wage was \$4.73 for the same jobs. *Id.* As Sawyer observed, "At least seven states appear to have lowered their maximum wages, and South Carolina no longer pays wages for most regular prison jobs – assignments that paid up to \$4.80 per day in 2001." *Id.*

\$1.41 per hour, by working for state-owned businesses.¹⁵³ In addition, deductions often leave “workers with less than half of their gross pay.”¹⁵⁴ Alabama, Arkansas, Florida, Georgia, and Texas still do not pay wages for most work programs.¹⁵⁵

Because of paltry wages and prison-retail prices,¹⁵⁶ spending power is vastly different in prisons, which is driven by pay-to-stay policies¹⁵⁷ created to shift costs from the government to the incarcerated. Commissary spending averaged \$947 per person annually, exceeding earnings.¹⁵⁸ Three-quarters of their commissary spending was for basic needs, such as food and hygiene products, not luxuries.¹⁵⁹ This poses multiple problems because (1) pre-incarceration incomes tend to be disproportionately low for most inmates¹⁶⁰ and (2) much of the money spent at prison retailers comes from families and friends outside prison,¹⁶¹ who also tend to be from low income families.¹⁶² Thus, low-income individuals and families are hit

¹⁵³ *Id.* Thus, individuals working for businesses earn about twice as much as those working for regular prison jobs. *Id.*; see also Daniel Moritz-Rabson, ‘Prison Slavery’: Inmates Are Paid Cents While Manufacturing Products Sold to Government, NEWSWEEK (Aug. 28, 2018, 5:12 PM), <https://www.newsweek.com/prison-slavery-who-benefits-cheap-inmate-labor-1093729> [https://perma.cc/9KBW-TT4] (observing that inmates receive little compensation). Accordingly, programs like the Prison Industry Enhancement Certification Program (PIECP) aimed to pay inmates the prevailing local wage for similar work. See BUREAU OF JUSTICE ASSISTANCE, U.S. DEP’T OF JUSTICE, PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAM 1 (2004) <https://www.ncjrs.gov/pdffiles1/bja/203483.pdf> [https://perma.cc/G3Z9-QDJG].

¹⁵⁴ See Sawyer, *supra* note 151.

¹⁵⁵ See *State and Federal Prison Wage Policies and Sourcing Information*, PRISON POLY INITIATIVE (Apr. 10, 2017), https://www.prisonpolicy.org/reports/wage_policies.html [https://perma.cc/WAE4-MCYH].

¹⁵⁶ See Stephen Raher, *The Company Store and the Literally Captive Market: Consumer Law in Prisons and Jails*, 17 HASTINGS RACE & POVERTY L.J. 3, 24–25 (2020).

¹⁵⁷ Lauren-Brooke Eisen, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause*, BRENNAN CTR. FOR JUST. (July 31, 2014), <https://www.brennancenter.org/our-work/research-reports/paying-your-time-how-charging-inmates-fees-behind-bars-may-violate> [https://perma.cc/MQ5E-EAVR]; see, e.g., *50-State Criminal Justice Debt Reform Builder*, CRIM. JUST. POLY PROGRAM HARV. L. SCHOOL, <https://cjdebtreform.org/national-comparison> [https://perma.cc/N8ZG-2PRA] (last visited Oct. 24, 2020) (collecting fees and surcharges imposed by states).

¹⁵⁸ Stephen Raher, *The Company Store: A Deeper Look at Prison Commissaries*, PRISON POLY INITIATIVE (May 2018), <https://www.prisonpolicy.org/reports/commissary.html> [https://perma.cc/3RJE-S59G].

¹⁵⁹ *Id.*

¹⁶⁰ See Raher, *supra* note 156, at 9 (citing Rabuy & Kopf, *supra* note 94).

¹⁶¹ *Id.* at 10.

¹⁶² Among prisoners aged twenty-eight to thirty-four, the bottom 5% of families in income accounted for about 30% of the inmates, while the bottom 20% accounted for nearly 50% the inmates, and the bottom 50% accounted for over 82% of prisoners. See Christopher Ingraham, *Where America’s Future Prisoners*

with any fees and charges associated with payment into the inmate trust fund¹⁶³ and overpriced retail goods without the opportunity to compensate for the cost through wages.

Currently, all states have some sort of procedure for an inmate trust fund, which are used to save costs on gate money and automatically deducted from for certain court-mandated obligations.¹⁶⁴ The Federal Bureau of Prisoners stated that these funds “provide inmates an opportunity to purchase articles or services not issued or delivered as basic care by the institution or of a different quality.”¹⁶⁵ Many inmate trust funds do not accrue interest.¹⁶⁶ States like Virginia¹⁶⁷ and Wisconsin¹⁶⁸ also withhold money from prisoners’ paychecks or transfers made by family and friends in a trust account for gate money purposes, shifting the burden of the prisoner’s re-entry resources to family and friends.

Are Born, WASH. POST (Mar. 14, 2018, 12:00 PM), <https://www.washingtonpost.com/news/wonk/wp/2018/03/14/where-americas-future-prisoners-are-born/> [https://perma.cc/ZS8H-26ZK].

¹⁶³ See Raheer, *supra* note 156, at 19.

¹⁶⁴ *Id.*; see also *id.* at 60 (“[M]oney can be subject to levies for fees, fines, restitution, or civil judgments.” (citing 3 MICHAEL B. MUSHLIN, RIGHTS OF PRISONERS § 16:20 (5th ed. rev. 2018))).

¹⁶⁵ FED. BUREAU OF PRISONS, U.S. DEP’T OF JUSTICE, TRUST FUND/DEPOSIT FUND MANUAL 1(2018), <https://www.bop.gov/policy/progstat/4500.12.pdf> [https://perma.cc/553P-SYUW].

¹⁶⁶ Four circuit courts of appeals have addressed the question of whether incarcerated people are entitled to interest earned on their trust account balances. See Emily Tunink, Note, *Does Interest Always Follow Principal?: A Prisoner’s Property Right to the Interest Earned on His Inmate Account under Young v. Wall*, 642 F.3d 49 (1st Cir. 2011), 92 NEB. L. REV. 212, 213 (2013) (discussing circuit split). Only one court has held that the beneficiary has a property right to earned interest. See *Schneider v. Cal. Dep’t of Corr.*, 151 F.3d 1194, 1201 (9th Cir. 1998) (holding that the district court erred in concluding that inmates do not have a protected property interest in interest earned on ITAs).

¹⁶⁷ The Virginia Department of Corrections withholds 10% of money transfers from family members to create a \$1,000 reserve of each prisoner. See VA. DEP’T OF CORR., OFFENDER MANAGEMENT AND PROGRAMS: OPERATING PROCEDURE 802.2 7 (2019) <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-802-2.pdf> [https://perma.cc/MT2N-F4JJ].

¹⁶⁸ Wisconsin law provides:

Upon transfer of the inmate to the first placement, following initial classification under § DOC 302.16, and in all subsequent reclassifications under § DOC 302.17, the institution business office shall deduct 10% of all income earned by or received for the benefit of the inmate, except from work release and study release funds under ch. DOC 324, until \$5,000 is accumulated, and shall deposit the funds in a release account in the inmate’s name. The department shall adjust the maximum release account amount every 5 years by multiplying \$5,000 by the percentage increase of the Consumer Price Index.

WIS. ADMIN. CODE DOC § 309.466(1) (2020).

Federal legislation, namely the First Step Act,¹⁶⁹ expands inmate employment as a means to train and rehabilitate inmates, thereby reducing recidivism.¹⁷⁰ If it is to meet these goals, it must either begin by revising gate money schemes to account for both inflation and spending power, providing more essential goods, or reducing fees and charges associated with commissaries and telecommunication so that inmates can begin saving money for their release.¹⁷¹ It is undeniable that allowing inmates to earn and save money would relieve the burden on not just the incarcerated individuals, but also that of any friends and family and allow individuals to financially support themselves upon reentry.¹⁷²

Furthermore, “prepaid debit cards have largely replaced cash and checks.”¹⁷³ However, these cards are operated by private companies that impose fees paid by the inmates.¹⁷⁴ These cards have several associated fees, such as “\$1.00 for declined point-of-sale or ATM transactions, \$5.00 to replace lost or stolen cards, a \$3.00 monthly ‘maintenance fee’, and a \$9.95 cancellation fee,” along with “ATM fees,” and “card balance inquir[y] fees.”¹⁷⁵ These fees cut into savings and the

¹⁶⁹ In December 2018, President Donald Trump signed the First Step Act into law to address reduce recidivism, reduce the size of the federal prison population, and create mechanisms to maintain public safety. See *An Overview of the First Step Act*, *supra* note 3.

¹⁷⁰ See First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018).

¹⁷¹ Fees and charges associated with the prison industry are currently undergoing heavy litigation. See Raheer, *supra* note 156, at 30–35.

¹⁷² In passing inmate wage reform, the New York Assembly stated: By providing inmates a minimum wage of \$3.00, it will afford them the opportunity to have earnings when they are released, allowing them the ability to better re-integrate into society, potentially reducing the recidivism rate, making New York a safer place, and demonstrating that New York State will no longer be a participant in an act which attributes its origins to our greatest sin.

N.Y. STATE ASSEMB., A01275 MEMO: MEMORANDUM IN SUPPORT OF LEGISLATION (2019).

¹⁷³ For detailed responses to an Association of State Correctional Administrators survey on use of debit card for inmate release funds, see generally ASS’N OF STATE CORR. ADM’RS, USE OF DEBIT CARD FOR INMATE RELEASE FUNDS (2014) [hereinafter DETAILED RESPONSE ANALYSIS], <http://www.webcitation.org/6WSOq5hDf> [<https://perma.cc/VTU3-VNQA>]. For a summary report, see generally ASS’N OF STATE CORR. ADM’RS, USE OF DEBIT CARD FOR INMATE RELEASE FUNDS (2014) [hereinafter SUMMARY REPORT], <http://www.webcitation.org/6WSOalJPb> [<https://perma.cc/ZXZ7-DYNW>].

¹⁷⁴ See Herb Weisbaum, *Inmates Charged Fee After Leaving Jail*, NBC NEWS (Mar. 24, 2015), <https://www.nbcnews.com/business/consumer/inmates-charged-fee-after-leaving-jail-n329151> [<https://perma.cc/H25Y-4RPR>].

¹⁷⁵ Derek Gilna, *HRDC Files Class-Action Suit Over CDCR Debit Release Cards* (Jan. 31, 2018), <https://www.prisonlegalnews.org/news/2018/jan/31/hrdc-files-class-action-suit-over-cdcr-debit-release-cards/> [<https://perma.cc/K9SF-XZSB>]; see also Letter from Stephen Raheer, Pro Bono Legal Analyst, Prison Pol’y Initiative, to Richard Cordray, Director, Consumer Fin. Prot. Bureau (Mar. 18,

already meager gate money. The most obvious way to offset these issues would be to revise the amount of gate money itself.

B. Gate Money Should Be Intentionally Distributed Using the TARP Framework

Once gate money is adjusted to account for inflation and the in-prison economy, it should be distributed with a narrow purpose, using the LIFE and TARP studies. Granted, the TARP studies were discounted as failures because of the work-disincentivizing effect of the program¹⁷⁶ and overall lack of reduction in recidivism.¹⁷⁷ There was, however, a critical component of success that is often overlooked: recidivism did not rise despite the prolonged period of unemployment.¹⁷⁸

Both LIFE and TARP were designed to provide limited financial aid to recently released prisoners during the critical transition period between prison and full integration.¹⁷⁹ After determining that providing additional training or actual employment opportunities to recently released individuals was unsuccessful in the LIFE project, the Department of Labor concentrated on providing a minimum level of income support during the period immediately following release.¹⁸⁰ The purpose of this strategy was to aim at alleviating the severe financial hardship that recently released individuals faced by modifying unemployment insurance and extending its coverage to newly released prisoners.¹⁸¹ Administratively, the program was easily extendable, and even moderate reductions in recidivism would have very favorable cost-to-benefit ratio.¹⁸²

TARP demonstrated that providing minimum unemployment benefit payments to recently released individuals for three and six month periods “could decrease arrests “by 25 to 50%.”¹⁸³ TARP also demonstrated that the recently released individuals who obtained paying jobs were paid better wages

2015), <https://static.prisonpolicy.org/releasecards/CFPB-comment.pdf> [<https://perma.cc/Z7SK-EZLV>] (discussing fees associated with prepaid cards).

¹⁷⁶ ROSSI, BERK & LENIHAN, *supra* note 21, at 15. Sixty dollars or seventy dollars per week without work may have been more attractive than \$100 for 30–40 work hours (before taxes). However, the payments were modest enough that it would not have completely nulled work incentive effects. *Id.*

¹⁷⁷ *Id.* at 16

¹⁷⁸ *See id.* at 8, 16.

¹⁷⁹ *Id.* at 7.

¹⁸⁰ *See id.*

¹⁸¹ *Id.*

¹⁸² *See id.*

¹⁸³ *Id.*

and had better working conditions.¹⁸⁴ This suggested that “the unemployment benefit payments allowed [the individuals] to search more effectively for better employment than could their counterparts who did not receive payments.”¹⁸⁵

By adopting the TARP model of purposeful distribution, recently released individuals would have a safety net during the first few weeks of transition. For example, if California revised its gate money to \$1,200 to account for inflation, provided \$200 at the gate, and gave a weekly installment of \$200 for five weeks, individuals would be able to have some passive income while transitioning from the release to reentry period. Requiring individuals to contact and participate in the wealth of reentry programming resources as a condition of parole would cause the work-disincentivizing effects that the TARP project suffered from to decrease. During this time, recipients would be able to use that opportunity to get vocational training and education, leading to better employment opportunities. Furthermore, in a state like California, which already has a discretionary emergency fund in place for parole officers to distribute to parolees based on need,¹⁸⁶ an installment system would be a minor extension.

C. Reentry Packages Should Be Reevaluated to Include Cell Phones

Ninety-six percent of Americans own a cellphone of some kind, while 81% of Americans own smartphones.¹⁸⁷ Almost 75% of American adults own a computer of some kind, while about 50% own tablets or e-reader devices.¹⁸⁸ Additionally, “[l]ow income families are far more likely than others to rely on a smartphone as their only internet connection.”¹⁸⁹ From 2013 to 2018, the number of people with less than \$30,000 in income who relied on smartphones rather than broadband in-

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Do I Get Any Financial Assistance or “Gate Money” from Parole when I First Get Out?*, ROOT & REBOUND, <https://roadmap.rootandrebound.org/parole-probation/state-parole/after-release-what-to-expect-in-your-first-days-ou/do-i-get-any-financial-assistance-or-gate-money-fr/> [<https://perma.cc/ZTG6-ECTG>] (last visited Oct. 24, 2020).

¹⁸⁷ *Mobile Fact Sheet*, PEW RES. CTR. (June 12, 2019), <https://www.pewresearch.org/internet/fact-sheet/mobile/> [<https://perma.cc/R37A-KDVV>].

¹⁸⁸ *Id.*

¹⁸⁹ *Equity and Technology: Why Mobile Communication Matters for Low Income Families*, APPTGY, <https://www.apptegy.com/guides/the-importance-of-mobile-for-low-income-families/> [<https://perma.cc/8MW8-WXT5>] (last visited Oct. 24, 2020).

ternet increased from 12% to 31%, while the increase was nominal (5% to 9%) for those who had an income over \$75,000.¹⁹⁰ This is largely because smartphones have become the cheapest way to communicate and access resources for low-income Americans.¹⁹¹ For recently released individuals navigating their way home or to a halfway house after years in prison, cell phones are an essential item that prisoners acquire with their gate money.

Furthermore, parolees must “go to an approved residence and report within three days to the United States Probation Office shown on the release certificate.”¹⁹² For individuals like Allen, who needed three days to arrive home, meeting this requirement is difficult without a cell phone. Yet, failure to report to a probation officer may constitute a probation violation.¹⁹³

“Judges have broad discretion over jail sentences or other penalties for probation violations,” limited only by state statutes.¹⁹⁴ Penalties may range from community service to having to pay large fines or going to jail.¹⁹⁵ The judge may also revoke probation entirely.¹⁹⁶ Thus, cell phones could determine the success of an individual’s release in the first days of supervision.

Currently, the government already provides phones to parolees in halfway houses through the Lifeline program.¹⁹⁷ Lifeline provides up to a \$9.25 monthly discount on certain phone and internet service for eligible low-income subscribers

¹⁹⁰ *Mobile Fact Sheet*, *supra* note 187.

¹⁹¹ *Equity and Technology: Why Mobile Communication Matters for Low Income Families*, *supra* note at 189.

¹⁹² *Frequently Asked Questions*, U.S. DEP’T OF JUSTICE (Sept. 29, 2015), <https://www.justice.gov/uspc/frequently-asked-questions#q1> [<https://perma.cc/T64J-HYST>].

¹⁹³ *Probation Violations*, JUSTIA (May 2019), <https://www.justia.com/criminal/parole-and-probation/probation-violations/> [<https://perma.cc/39W9-2KF3>].

¹⁹⁴ *Probation Violation*, FINDLAW (MAR. 18, 2020) <https://criminal.findlaw.com/criminal-charges/probation-violation.html> [<https://perma.cc/6A4U-Q8NT>].

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ In 2014, former Attorney General Eric Holder announced new requirements for halfway houses to permit cell phones for formerly incarcerated individuals pursuing job opportunities and to provide funds for transportation. Press Release, U.S. Dep’t of Justice, *In New Step to Fight Recidivism, Attorney General Holder Announces Justice Department to Require Federal Halfway Houses to Boost Treatment Services for Inmates Prior to Release* (Mar. 24, 2014), <https://www.justice.gov/opa/pr/new-step-fight-recidivism-attorney-general-holder-announces-justice-department-require> [<https://perma.cc/LDM7-6Y8S>].

throughout the country.¹⁹⁸ “[Subscribers] must either have an income that is at or below 135% of the Federal Poverty Guidelines or participate in certain federal assistance programs, such as the SNAP or Medicaid” to participate in the program.¹⁹⁹ Many individuals who have been released from prison would meet this threshold.²⁰⁰

In addition, prisons already determine how much gate money each prisoner is eligible for before their release using factors like their savings and history.²⁰¹ This could easily be extended to the provision of cell phones, so that prisoners may have immediate access to a cell phone upon release without having to cut into their gate money for a phone.

CONCLUSION

After his release, Allen was invited to Washington, D.C. to testify in a congressional hearing, which eventually led to major criminal law reform. He became an advocate for criminal justice reform, speaking to many about his experience. Now fifty-one-years-old, he spends his free time with his girlfriend, children, and grandchildren. Allen’s story is an example of the difficulties that prisoners continue to face upon release, but it is also one of the extraordinary potential for change that individuals have.

This Note contends that legislators now need to recognize “release” as a distinct phase and reimagine the immediate needs of individuals as they reenter society, beginning with the money they will have in their pockets on the day of their release. In order to achieve economic stability, everyone needs food, housing, gainful employment, and access to social services. For incarcerated individuals who have often been isolated from society, it is natural that they require immediate assistance to integrate and achieve that level of stability.

The vulnerability and the level of insecurity that recently released individuals face have been acknowledged and well-

¹⁹⁸ See *Lifeline Support for Affordable Communications*, FCC (Sept. 14, 2020), <https://www.fcc.gov/consumers/guides/lifeline-support-affordable-communications> [<https://perma.cc/UJQ5-TT9W>]. Lifeline provides that:

Subscribers may receive a Lifeline discount on either a wireline or a wireless service, but they may not receive a discount on both services at the same time. Lifeline also supports broadband Internet access service and broadband-voice bundles. FCC rules prohibit more than one Lifeline service per household.

Id.

¹⁹⁹ *Id.*

²⁰⁰ See *supra* Part III.

²⁰¹ See WILSON, *supra* note 5, at 4.

documented since the nineteenth century. The very idea of gate money grew from that concept and has since served as an immediate way of addressing issues of economic instability from the moment of the prisoner's release. Yet, there continues to be a gap between the purpose of gate money and what it actually achieves. Thus, legislators must now revise the gate money framework to bridge that gap by providing a modicum of economic stability for recently released individuals until they are able to connect with social services and other reentry programs.

We, as a society, have committed to incarcerating individuals to not only punish, but in the hopes that prison helps lift them to a place better than they were before incarceration. If this is indeed the goal, we must recognize the structural barriers that incarcerated individuals face beyond prison and alleviate the economic and social barriers that incarcerated individuals face immediately upon release. By recognizing and addressing the complex gap between release and reentry, we can empower individuals like Allen upon release and reduce recidivism.

