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In Search of Second Chances

By THE EDITORIAL BOARD MAY 31, 2014

The defendant had been charged, tried and convicted of a crime. As she neared the end of her prison sentence, a well-known conservative columnist wrote that she was “paying her dues,” and that “there is simply no reason for anyone to attempt to deny her right to leave her troubles in the past and start anew.”

That was 2004, and the woman behind bars was Martha Stewart. Surely, the American ideal of second chances — especially for those with criminal records — should not be reserved only for the rich and powerful. But a raft of federal and state laws impose post-conviction restrictions on a shockingly large number of Americans, who are prevented from ever fully paying their debt to society.

At least 65 million people in the United States, or more than one in four adults, have a criminal record, which can mean anything from an arrest to a prison sentence. This can trigger severe penalties that continue long after punishment is complete, according to a new report by the National Association of Criminal Defense Lawyers.

Many of these penalties, known as collateral consequences, are mandatory, and are imposed regardless of the seriousness of the offense or the person’s individual circumstances. Laws can restrict or ban voting, access to public housing, gun possession and professional and business licensing. They can affect a person’s immigration status, parental rights, credit rating, ability to get a job, and eligibility for benefits.

In all, more than 45,000 laws and rules serve to exclude vast numbers of people from fully participating in American life.

Some laws make sense: No one advocates letting someone convicted of pedophilia work in a school. But too often collateral consequences bear no relation

to public safety. Should a woman who possessed a small amount of drugs 15 years ago be permanently unable to be licensed as a nurse?

These laws are also counterproductive, since they make it harder, if not impossible, for people with criminal records to find housing or land a job, two key factors that reduce recidivism. And, like virtually every facet of the American criminal justice system, the brunt of these laws falls disproportionately on people of color. For example, blacks and whites use marijuana at similar rates, but blacks are arrested for possession nearly four times as often as whites.

The report makes several recommendations, including the repeal of most mandatory post-conviction penalties, except for those specifically needed to protect public safety. Where the penalties are not mandatory, they should be imposed only if the facts of a case warrant it. The report also recommends that the process for restoring a person's rights and status be simple, clear and accessible. Some states and cities have taken steps to lift the burden of these laws. Last year, the New York City Housing Authority launched a two-year pilot program to house 150 people coming out of prison with their families. And in at least a dozen states, employers are protected by hiring laws that encourage them to take on job applicants who have criminal records.

Conservatives and liberals alike agree that it is unfair to continue to punish people who have already served their time. In his 2004 State of the Union address, President George W. Bush said, "America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life."

The point is not to excuse or forget the crime; in the Internet era that wouldn't be possible anyway. Rather, it is to recognize that in America's vast criminal justice system, where 14 million people are arrested a year and 2.2 million are put behind bars (virtually all of whom will one day be released), second chances are imperative. It is in no one's interest to keep a large segment of the population on the margins of society.

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