

Reentry: Advocating for Formerly Incarcerated Older Adults

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

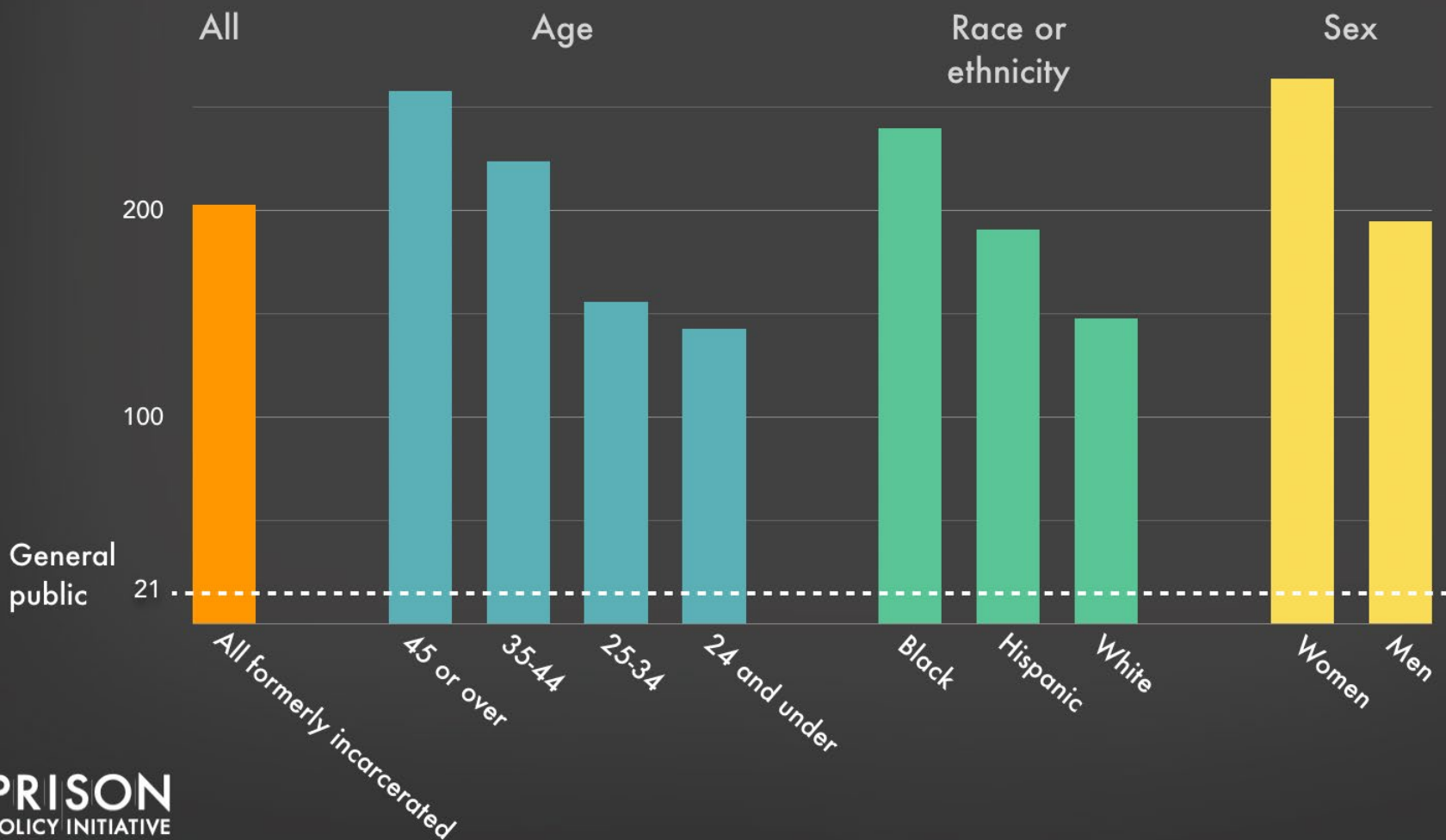
Key Lessons

- Older Adults reentering the community after incarceration face significant challenges in accessing housing, economic security, and health supports
- Legal services attorneys and older adult advocates serve a crucial role in assisting older adults in reentry

Housing

Homeless Rates Among Formerly Incarcerated People

Number of homeless per 10,000 formerly incarcerated people in each category, compared to the general public in 2008 (the most recent year data for formerly incarcerated people are available)



Housing Barriers

- **Criminal records**
- Lack of income/employment
- Lack of credit/rental history
- Lack of accessible housing, housing with supports and services
- Lack of family supports or risk of jeopardizing housing by moving in with family

Exclusions Based on Criminal History May Violate the Fair Housing Act

- Discriminatory effects of exclusions may burden certain protected groups (i.e., people of color or people with disabilities)
 - **Disparate treatment** (intentional discrimination)
 - **Disparate impact** (facially neutral policy with unjustified discriminatory effects)
 - **Refusal to make reasonable accommodations** (for cases where criminal history is tied to disability)

More on Disparate Impact Discrimination

- Exclusions based solely on prior arrests not leading to convictions are never justified
- Blanket bans on prior convictions generally illegal

Importance of Individualized Review

- In evaluating criminal conduct, housing providers should consider factors such as:
 - Nature/severity
 - Recency
 - Mitigating factors like disability
 - Evidence of rehabilitation

Practical Tips for Housing Search

- Try to address criminal history issues at front end
- Get copy of criminal record in advance
- Collect evidence of mitigating factors and rehabilitation
- Be prepared to talk about problematic convictions
- Ask for policies in writing
- Document housing search and interactions with housing providers in case you need to file a fair housing complaint

What to Do if Denied Based on Criminal History

- Contact a Fair Housing Initiatives Program (FHIP) for help with investigating/filing an administrative fair housing complaint
- Fair housing litigation also an option, but more complicated
- Statute of Limitations:
 - For administrative complaints: 1 year from date of last act of discrimination
 - For litigation: 2 years from date of last act of discrimination

Other Resources for Clients

- Expungements (legal aid agencies, public defender offices, etc.)
- Public Housing Authorities (PHAs)
- Continuums of Care (CoC)
 - Access HUD homeless assistance resources through Coordinated Entry System
 - Supportive Housing
 - Emergency Housing Vouchers
- Emergency Rental Assistance Program (ERAP)
 - Not just for past-due rent; can get funds for future rent

Health Care

Key Takeaways

- Getting health care benefits as soon as possible when returning to the community is an urgent priority for older adults
- A new Medicare Special Enrollment Period effective January 1, 2023 will significantly improve Medicare enrollment processes
- Medicaid enrollment processes can start before reentry
- Definitions of when individuals are no longer “in custody” differ between Medicare and Medicaid

Health Care During Incarceration

- Authorities operating institutions, e.g., jails, prisons, have the obligation to provide health care.
- Medicare and Medicaid cannot pay for health care services. Even if the individual continues to be enrolled, enrollment is “suspended.”
 - Exception: if someone is enrolled in Medicaid and needs to go to a hospital outside the facility, Medicaid can pay for those services.
 - Exception: CMS, under its demonstration authority, is authorizing some limited programs allowing for Medicaid services in the period immediately preceding reentry.
 - Some legislative momentum for Medicaid coverage in the last month prior to reentry

New Medicare Special Enrollment Period

- The Problem:
 - If individual turns 65 while incarcerated, individual was expected to enroll in Medicare and pay premium though receiving no benefits
 - If individual didn't enroll, no special enrollment period upon reentry and late enrollment penalty for life
 - Especially difficult for people who did not also qualify for Medicaid
- The Fix:
 - Special Enrollment Period (SEP) that begins the date of reentry
 - 12 month SEP. Coverage effective the month after application. Can request retroactive coverage back to reentry date.
 - No late enrollment penalty

New Medicare SEP—Details

- 12 month flexibility to allow for startup of Social Security or start of employment income needed to pay premiums
- Retro coverage helpful for medical expenses incurred shortly after release. Must pay premiums for retro months
- Only applies to release dates on or after January 1, 2023. If earlier release date, cannot undo late enrollment penalties

New Medicare SEP: Outstanding Issues

- Not yet clear whether applications can be started before release date
 - SEP says cannot “apply” before release date
 - SSA staff in institutions assist with Social Security applications; potential to add Medicare assistance?
- If already enrolled in Medicare when incarcerated and don’t affirmatively disenroll, SSA gives three month “grace period.” SEP doesn’t address this.
 - Individual stays enrolled in “suspension.” Upon reentry, SSA collects grace period premiums from first benefit check.

Advocacy tip: Individuals with Medicare entering incarceration usually should disenroll from Medicare to avoid grace period premium liability.

Medicaid Coverage

- If individual already has Medicaid before entering a facility, the state may suspend enrollment for any period, including up to reentry.
 - Suspension makes it easier to start up coverage immediately
 - States are increasingly opting to suspend through reentry date
- If individual does not have Medicaid, state can enroll at any time with benefits starting upon reentry.
 - States are expanding efforts to get individuals enrolled prior to reentry

Medicare Coverage Issues When “In Custody”

- Medicare will not provide coverage during certain types of supervision
 - Home confinement
 - Required residence in a halfway house
 - Confined completely or partially in any way under a penal statute or rule
- Medicaid coverage is broader
 - Looks at whether “confined in an institution.”
- CMS is considering whether to amend the Medicare definition

When Medicare Says Your Client is Still “In Custody”

Step one: ensure that current terms of release have been transmitted accurately. Consider appealing “custody” status.

- If client qualifies for Medicaid:
 - Medicaid should cover any Part A or Part B services
 - Providers and/or Medicaid program may not understand Medicare suspension. May need override by Medicaid computer program
- If no free Medicare Part A:
 - Can enroll in a Marketplace plan
- If has free Part A and does not qualify for Medicaid:
 - No good answer

Economic Security

Key Takeaways

- Connecting older adults to SSI and Social Security is a critical way to ensure a baseline of economic security.
- For older adults who do not yet qualify based on age, the process of applying for disability benefits can pose many obstacles.
- Re-connecting individuals who were receiving SSI prior to incarceration can be challenging.

Income Security

- SSI, SSDI, retirement, and survivors' benefits
- Pensions
- Nutrition: SNAP, senior nutrition programs
- Utilities: LIHEAP, ACP
- Employment
- Unemployment and state disability benefits
- Workers compensation
- Credit and debt issues, fines, and fees

Social Security and SSI

Social Security	SSI
“Insured” individuals with sufficient work history	Individuals with limited or no work history
Provides retirement, survivors’ and disability (SSDI) benefits to the worker and certain dependents	Provides age-based benefits to individuals age 65 or older, and disability benefits to individuals under 65.
Not means-tested	Means-tested (asset limit, benefit reduced if receiving other income like Social Security retirement)
Maximum benefit for an individual: \$4,555 Average benefit: \$1,551	Maximum benefit for an individual: \$914 (plus state supplement in some states)

Awareness of Benefits

- Social Security includes “derivative” benefits
 - Spouse and widow(er) benefits. Includes divorced spouse if marriage lasted at least 10 years
 - Minor child, and spouse/widow(er) caring for minor child
 - Adult child who became disabled before age 22
 - Dependent parent of a deceased worker

Applying for Age-Based Benefits

- Typically a straightforward process because there is no need to go through the disability process
- Screen individuals for these benefits
 - For example, someone who receives a small Social Security retirement benefit may qualify for a partial SSI benefit to bring them up to the SSI maximum benefit.
 - Social Security derivative benefits

Prerelease Agreements

- Allows the Social Security Administration (SSA) to begin processing an individual's application up to several months before their scheduled release date
- SSA has a national agreement that covers facilities under the Federal Bureau of Prisons
- Also has statewide agreements for social security replacement cards and/or benefit applications

Disability Benefits and Older Adults

- Complex and lengthy disability application process
- In addition to common challenges with access to identity documents and other needed documentation for an application
- Exacerbated for individuals experiencing housing instability and homelessness
- Exacerbated by challenges obtaining medical care (and documentation of that care)

Reconnecting to SSI and Social Security Benefits

- Existing rules allow individuals who qualified for SSDI or SSI disability prior to incarceration to quickly reconnect to these benefits after release.
- But the reconnection rule for SSI is limited, leading some individuals to need to apply anew for SSI disability.
 - SSI is critical for individuals with limited work history

SSI Suspension Versus Termination of Benefits

- **Suspension** means that the individual's underlying eligibility continues. Once the specific issue that caused suspension is resolved, the person's benefits can be **reinstated** immediately.
- **Termination** means the individual's underlying eligibility ends. In order to receive benefits again, the person will need to apply anew.

Reinstatement Policy

SSDI	SSI
Benefits are suspended if convicted and confined for more than 30 days based on the conviction. GN 02607.160	Benefits are suspended if an individual is a resident of a penal institution throughout a month. GN 02607.050
Considerations for judicial process and what qualifies as confinement. GN 02607.200	Considerations for what qualifies as a “penal institution.” SI 00520.009
Benefits can be reinstated at any time. GN 02607.840	Benefits can be reinstated within 12 months of the suspension. SI 02301.205
No “termination” of eligibility.	“Termination” of eligibility after being incarcerated for more than 12 months.

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