Double Whammy: Collateral Consequences of Conviction and Imprisonment for Sustainable Communities and the Environment

Avi Brisman
DOUBLE WHAMMY: COLLATERAL CONSEQUENCES OF CONVICTION AND IMPRISONMENT FOR SUSTAINABLE COMMUNITIES AND THE ENVIRONMENT

Avi Brisman*

"[E]nvironmental policy includes not just what government says about the environment, not just what is labeled as environmental policy, but everything the government does that affects it."2

I. INTRODUCTION

Twelve years ago, Marc La Cloche went to prison, convicted of first-degree robbery.3 While in an upstate New York prison, La Cloche decided to turn his life around.4 He earned a high-school equivalency diploma and learned a trade—barbering.5 When the time came for him to be paroled, he wrote to the licensing authorities in Albany asking for certification as a barber's apprentice—the first step toward a full barber's license.6 His application

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1 For the purposes of this Article, "collateral consequences" refers to "the universe of adverse consequences of a criminal conviction other than those imposed by a judge at sentencing." CRIMINAL JUSTICE SECTION, AMERICAN BAR ASSOCIATION: BLACK LETTER: ABA STANDARDS FOR CRIMINAL JUSTICE; COLLATERAL SANCTIONS AND DISQUALIFICATION OF CONVICTED PERSONS (3d ed. 2003), available at http://www.abanet.org/leadership/recommendations03/103A.pdf (last visited Sept. 11, 2003) [hereinafter ABA STANDARDS].

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4 Haberman, supra note 3.

5 La Cloche, 2003 N.Y. Misc. LEXIS 133, at *2; Haberman, supra note 3.

6 Haberman, supra note 3.
was promptly turned down.\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *2; Haberman, supra note 3.} The reason, according to the Department of State, which administers licenses, was that La Cloche’s criminal history indicated a “lack of good moral character and trustworthiness required for licensure.”\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *3; Haberman, supra note 3 (quoting the Department of State’s rejection of La Cloche’s application).} Thus, the very state that spent money teaching La Cloche a trade in prison had denied him use of that skill because of this imprisonment.\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *9; Haberman, supra note 3.}

After his initial rejection, La Cloche appealed the denial.\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *2-3; Haberman, supra note 3.} In a series of administrative hearings and proceedings, he received and lost his apprentice certificate, before filing suit in the Supreme Court of New York—the trial-level court in that state.\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *2; see Haberman, supra note 3.} The court ruled that La Cloche could not be denied his certificate without first being given an opportunity to present evidence of his “good moral character.”\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *1; see Haberman, supra note 3.} La Cloche is now awaiting a licensing hearing “to show his moral worth.”\footnote{Haberman, supra note 3.}


\[\text{\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *2; Haberman, supra note 3.}}\] \[\text{\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *3; Haberman, supra note 3 (quoting the Department of State’s rejection of La Cloche’s application).}}\] \[\text{\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *9; Haberman, supra note 3.}}\] \[\text{\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *2-3; Haberman, supra note 3.}}\] \[\text{\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *2; see Haberman, supra note 3.}}\] \[\text{\footnote{La Cloche, 2003 N.Y. Misc. LEXIS 133, at *1; see Haberman, supra note 3.}}\] 


cerated in the United States, most will be released at some point. With many states currently facing severe budget shortfalls, a number of them are releasing prisoners early. Despite these large numbers, ex-offenders, like La Cloche, face a number of hurdles to reentry into society. In addition to barbering, New York prohibits ex-offenders from gaining employment in more than one hundred job categories, including plumbing, real estate, education, health care and private security. Pennsylvania has similar laws on the books, prohibiting anyone convicted of a long list of crimes, including something as
innocuous as the theft of two library books, from working in nursing homes or home health care for the elderly. Besides occupational licensing restrictions for ex-felons, many states permit public and private employers to ask about and rely upon arrests and convictions in making employment decisions. In addition to barriers in employment, ex-offenders may be prohibited from receiving welfare, food stamps, public housing, federal college loans and grants, and may be denied the right to vote, to be adoptive and

20 May, supra note 16, at 193; see also infra note 61.
21 Jennifer Leavitt, Comment, *Walking a Tightrope: Balancing Competing Public Interests in the Employment of Criminal Offenders*, 34 CONN. L. REV. 1281, 1287 (2002); Paul Samuels, Director/President, Legal Action Center, & Debbie Mukamal, Staff Attorney, Legal Action Center, Address at the 12th Annual Symposium on Contemporary Urban Challenges, *Beyond the Sentence: Post-Incarceration Legal, Social, and Economic Consequences of Criminal Convictions*, Fordham Univ. Sch. of Law (Feb. 20, 2003); Posting of Michelle Harrison, National H.I.R.E. Network, mharrison@hirenetwork.org, to info@hirenetwork.org (Mar. 6, 2003) (on file with author) [hereinafter Posting of Michelle Harrison].
23 *ABA STANDARDS, supra* note 1, at 5; Demleitner, supra note 15, at 1035; Mauer & Chesney-Lind, supra note 22, at 5; Rubinstein & Mukamal, supra note 22, at 37-49; Samuels & Mukamal, supra note 21.
24 *ABA STANDARDS, supra* note 1, at 5; Barbosa, supra note 22, at 139; Butterfield, *supra* note 19, at 18; Demleitner, *supra* note 15, at 1036; Mauer & Chesney-Lind, *supra* note 22, at 5; Leavitt, *supra* note 21, at 1284; Rubinstein & Mukamal, *supra* note 22, at 37-49; Samuels & Mukamal, supra note 21.
25 *ABA STANDARDS, supra* note 1, at 5; Barbosa, *supra* note 22, at 141 (noting that federal law prohibits federal financial aid to students convicted of drug-related offenses and that “[n]o other class of offense, including violent offenses such as murder, carries with it this automatic denial”); Eric Blumenson & Eva S. Nilsen, *How to Construct an Underclass, or How the War on Drugs Became a War on Education*, 6 J. GENDER, RACE & JUST. 61, 62 (2002) (noting that “[u]nder the Drug Free Student Loans Act of 1998, students who have ever been convicted of a drug offense are either temporarily or permanently ineligible for federal college loans and grants”); Johnson, supra note 22, at 5; Mauer & Chesney-Lind, *supra* note 22, at 5; Samuels & Mukamal, *supra* note 21.
26 In Richardson v. Ramirez, 418 U.S. 24 (1974), the Court held that it is permissible for
foster parents,\textsuperscript{27} and to drive.\textsuperscript{28} It is no wonder, then, that “[n]early two-thirds of some states to deprive felons the right to vote. In Hunter v. Underwood, 471 U.S. 222 (1985), the Court clarified its holding in Richardson, explaining that if the state’s disenfranchisement laws were intentionally enacted to prevent those of minority origin from voting, the statute might violate the Equal Protection Clause of the Fourteenth Amendment. Recently, a district court in Florida held that Florida’s disenfranchisement of criminals does not violate the First, Fourteenth, Fifteenth, or Twenty-Fourth Amendments of the Constitution, or the Voting Rights Act of 1965. Johnson v. Bush, 214 F. Supp. 2d 1333 (S.D. Fla. 2002). The case is now pending before the Eleventh Circuit. See also ABA STANDARDS, supra note 1, at 5; Marc Mauer, Mass Imprisonment and the Disappearing Voters, in INVISIBLE PUNISHMENT, supra note 22, at 50, 51 (noting that “[f]orty-eight states and the District of Columbia do not permit prison inmates to vote; thirty-two states disenfranchise felons on parole; and twenty-eight disenfranchise felons on probation”); Joan Petersilia, Parole and Prisoner Reentry in the United States, in PRISONS 509 (Michael Tonry & Joan Petersilia eds., 1999) (discussing the restrictions on the right to vote in Colorado and California); Demleitner, supra note 15, at 1040; Alec C. Ewald, “Civil Death”: The Ideological Paradox of Criminal Disenfranchisement Law in the United States, 2002 Wis. L. REV. 1045 (outlining the current state laws barring criminal offenders from voting, offering a brief history of criminal disenfranchisement in ancient and medieval Europe and the United States, explaining the ideological foundations of criminal disenfranchisement, and concluding that criminal disenfranchisement should be abolished); Johnson, supra note 22, at 5; Brian Pinaire et al., Barred from the Vote: Public Attitudes Toward the Disenfranchisement of Felons, 30 FORDHAM URB. L.J. 1519 (2003); Marc Mauer, Assistant Director, The Sentencing Project, Address at the 12th Annual Symposium on Contemporary Urban Challenges, Beyond the Sentence: Post-Incarceration Legal, Social, and Economic Consequences of Criminal Convictions, Fordham Univ. Sch. of Law (Feb. 20, 2003); Brian Pinaire & Milton Heumann, A Seat at the Table?: Public Opinion and Voting Rights for Felony Offenders (on file with author); Brian Pinaire, Ph.D. Candidate, Dep’t of Political Sci., Rutgers Univ., & Milton Heumann, Professor & Chair, Dep’t of Political Sci., Rutgers Univ., Address at the 12th Annual Symposium on Contemporary Urban Challenges, Beyond the Sentence: Post-Incarceration Legal, Social, and Economic Consequences of Criminal Convictions, Fordham Univ. Sch. of Law (Feb. 20, 2003); Samuel & Mukamal, supra note 21; Sentencing Project, Felony Disenfranchisement Laws in the United States, at http://www.sentencingproject.org/pdfs/1046.pdf (last visited Sep. 11, 2003) (providing a list of states that disenfranchise individuals while in prison, on probation, and on parole).
of released prisoners are expected to be rearrested for a felony or serious misdemeanor within three years of their release."\textsuperscript{29}

Not all of these barriers by themselves provoke ex-offenders to be recidivist.\textsuperscript{30} For example, a released prisoner is probably not going to go on

\begin{quote}
Demleitner, \textit{supra} note 15, at 1045.
\end{quote}

\textsuperscript{28} Demleitner, \textit{supra} note 15, at 1037; Samuels & Mukamal, \textit{supra} note 21. According to Samuels and Mukamal, twenty-four states automatically suspend or revoke driver's licenses for conviction of some or all drug offenses. \textit{Id.} Of these, twenty states impose a six-month penalty and four states impose a penalty of more than six months. \textit{Id.} Twenty-six states do not suspend or revoke driver's license privileges following conviction. \textit{See also} ABA \textit{STANDARDS, supra} note 1, at 5 (noting that in addition to having their drivers' licenses automatically suspended, some ex-offenders are unable to obtain automobile insurance); Mauer & Chesney-Lind, \textit{supra} note 22, at 5; Johnson, \textit{supra} note 22, at 5 (noting that collateral consequences "have effectively created a subclass of citizens who, even after doing what they were ordered to by a judge, are . . . unable to drive").

\textsuperscript{29} Leavitt, \textit{supra} note 21, at 1281 (quoting Ed Koch, \textit{Give Some Ex-Convicts Another Chance}, \textit{Newsday}, Aug. 17, 2001, at A49); see also \textit{Prisoners Re-entering the Community, supra} note 14; Sentencing Project, \textit{Recidivism of State Prisoners: Implications for Sentencing and Corrections Policy}, available at http://www.sentencingproject.org/brief/ pdfs1064.pdf (last visited Mar. 8, 2003) (noting that "of state prison inmates released in 1994 . . . 67.5\% of those discharged were rearrested within three years. . . . an increase of 5\% over a similar study of prisoners released in 1983"); Jonathan Simon, \textit{Miami: Governing the City Through Crime}, in \textit{THE SOCIAL SUSTAINABILITY OF CITIES: DIVERSITY AND THE MANAGEMENT OF CHANGE} 98, 105 (Mario Polese & Richard Stern eds., 2000) (stating that "correctional power tends to be self-undermining. Like some cancer drugs, it combats malignancy but only at the price of destroying the natural immunity of the body. Not surprisingly, in many states more than half of those released from prison in recent years have returned to prison" (citations omitted) [hereinafter Simon, \textit{Miami}]. This high rate of recidivism is not a new phenomenon. Twenty years ago, the numbers were similar. See David C. Leven, \textit{Curing America's Addiction to Prisons}, 20 \textit{Fordham Urb. L.J.} 641, 642 n.9 (1993) (noting "[a] study of a sample of prisoners released in 1983 from prisons in eleven states indicated that 62.5\% were rearrested for a new felony or serious misdemeanor"); Petersilia, \textit{supra} note 26, at 512 (noting that of the sixteen thousand inmates released during 1983 in eleven states, "63 percent . . . were arrested for a felony or serious misdemeanor offense within three years of release from prison").

\textsuperscript{30} One should note, however, that the combination of these collateral consequences of criminal conviction may undermine an ex-offender's sense of belonging in the community to which he is trying to return. See ABA \textit{STANDARDS, supra} note 1, at 6-7 (stating that "[t]he criminal justice system aims at avoiding recidivism and promoting rehabilitation, yet collateral sanctions and administrative barriers to reentry may severely impede an offender's ability for self-support in the legitimate economy, and perpetuate his alienation from the community"); Demleitner, \textit{supra} note 15, at 1040 (noting that while the denial of political
a shooting spree because he has been turned away at the voting booth. And there are certainly some individuals who will re-offend regardless of the barriers to reintegration into society—this, for example, individuals who either were not or could not be rehabilitated during their prison stay, or individuals who joined gangs while incarcerated. Putting aside the fact that there may be multiple known and unknown reasons for recidivism, research does indicate that there is an inverse relationship between the availability of employment and involvement in crime. Given that criminal defendants are often unaware of the potential consequences of a guilty plea and given that rights, such as the right to vote and the right to serve on juries, "are of great symbolic value, the daily impact of their denial may be more limited, even though long-term or permanent disenfranchisement is likely to increase alienation from society".)

31 See May, supra note 16, at 189 n.7 ("recidivism is a complex problem comprised of multiple causes").

32 See generally Nick Madigan, North Utah Faces Influx of Racists, N.Y. Times, Apr. 4, 2003, at A12 (reporting that northern Utah’s police and government "are grappling with a marked increase in crimes committed by men who joined white supremacist gangs while in prison and who, once released and bound by ideology and kinship, have settled in the area to pursue lives of crime").

33 FROM PRISON TO HOME, supra note 14, at 31 ("having a job with decent wages is associated with lower rates of reoffending"); Peter T. Kilborn, Flood of Ex-Convicts Finds Job Market Tight, N.Y. Times, Mar. 15, 2001, at A16 (quoting Bruce Western for the proposition that "employment discourages crime . . . [a]nd because [ex-offenders'] employment opportunities are poor, they're more likely to commit crime again"); May, supra note 16, at 188; Petersilija, supra note 26, at 519 ("if parolees can find decent jobs as soon as possible after release, they are less likely to return to crime and to prison"); Videotape: Address by Nora Duncan, Program Services Coordinator, Conn. Ass'n of Non-Profits, Building Bridges: From Conviction to Employment, Central Conn. State Univ. & Dep’t of Labor Conference, New Britain, Conn. (Jan. 15, 2003) (on file with author) (stressing that "[d]ecent employment is one of the key factors to preventing recidivism").

34 See Butterfield, supra note 19, at 18 ("[t]he ban on living in public housing is among the penalties for criminals that are not spelled out at sentencing"); Johnson, supra note 22, at 5 ("today's offenders learn that they have only begun to suffer the consequences of their convictions after they have satisfied their sentences"); Jeremy Travis, Invisible Punishment: An Instrument of Social Exclusion, in INVISIBLE PUNISHMENT, supra note 22, at 15, 34; cf. United States v. Littlejohn, 224 F.3d 960 (9th Cir. 2000) (holding that judges must warn defendants that a guilty plea to a drug felony may permanently prevent them from receiving federal cash assistance or food stamps); Barkley v. State, 724 A.2d 558 (Del. 1999) (holding that failure to inform defendant that his driver's license would automatically be revoked upon conviction, as required by applicable court rules, renders guilty plea invalid).

In February 2003, the Criminal Justice Section of the American Bar Association adopted the Black Letter ABA Criminal Justice Standards on Collateral Sanctions and Disqualification of Convicted Persons. The most important provisions of the Standards
facilitating employment opportunities for ex-felons may help to lower the recidivism rate,\textsuperscript{35} in the interest of fairness to the defendant, as well as in the interest of reducing crime, the laws governing ex-offenders should be re-examined and changed.\textsuperscript{36}

But there are additional reasons to address the laws governing ex-offenders. According to Professor Nora V. Demleitner, in her article, "Collateral Damage": No Re-entry for Drug Offenders:

The denial of basic rights affects not only the offender and her family, but also her community. Many communities to which . . . offenders return suffer disproportionately from lack of cohesion, unemployment, homelessness and family instability. By increasing the number of obstacles facing ex-offenders, their chances of succeeding in this environment are further reduced, with detrimental consequences for these communities.\textsuperscript{37}

There are a number of ways in which these detrimental consequences are manifested. First, crime, in and of itself, is an impediment to a sustainable community—a community in which improvement in the quality of human life is achieved through a long-term, integrated systems approach that jointly addresses economic, environmental, and social issues. A community with significant social problems, such as crime, will be unable to address other key issues, such as environmental problems, because it will focus on social problems.\textsuperscript{38} Second, the incarceration of ex-offenders removes potential

\textsuperscript{35} May, supra note 16, at 188-89.

\textsuperscript{36} Obviously, there are some instances in which the laws make sense. For example, according to JoAnne Page, Executive Director of the Fortune Society, a non-profit organization in New York that provides services to former inmates, "you don't want a child molester driving a school bus . . . ." Haberman, supra note 3, at B1. See also ABA STANDARDS, supra note 1, at 1 ("Some collateral consequences serve an important and legitimate public purpose, such as keeping firearms out of the hands of persons convicted of crimes of violence, or barring persons recently convicted of fraud from positions of public trust.").

\textsuperscript{37} Demleitner, supra note 15, at 1048 (citations omitted).

\textsuperscript{38} See infra Part III.A.
members of the legitimate workforce from the community, reducing the chances that the community will be economically sustainable. 39 In addition, without a consistent and reliable inner-city workforce, businesses may leave the community and relocate to the suburbs, contributing to the problem of sprawl. 40 Finally, crime and the fear of crime may also lead to the outward expansion of metropolitan areas—"edgeless cities" 41—and to the unsustainable practice of driving sport utility vehicles ("SUVs"). 42

This Article attempts to link the laws governing ex-offenders to sustainable development. It posits that if these laws contribute to recidivism, and if crime is an impediment to sustainable development, then these laws impede sustainable development. Because of this "double whammy," this Article advocates that environmental organizations should join forces with ex-offenders' rights groups to bring about changes in the laws governing ex-offenders. Although an in-depth discussion of how to eliminate or mitigate the collateral consequences of conviction and imprisonment 43 is outside the scope of this Article, where appropriate this Article will suggest specific changes to the laws pertaining to ex-offenders 44

Part II of this Article will provide an overview of the areas in which the laws governing ex-offenders are most likely to lead to recidivism—employment, welfare, and housing. In Part III, this Article will describe how crime and the fear of crime lead to unsustainable communities and contribute to unsustainable practices that degrade the environment. Part III will also attempt to address the problems in inferring a connection between the laws governing ex-offenders and sustainable development. Finally, in Part IV, this Article will argue that environmental organizations need to broaden their concept of what constitutes "environmental policy" by recognizing how the

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39 See id.
40 See id.
41 See infra Part III.B.
42 See infra Part III.C.
43 This Article distinguishes between conviction and imprisonment because a conviction does not necessarily result in imprisonment. For example, for some crimes, the punishment may come in the form of a fine, community service, treatment, etc. But both convictions that result in imprisonment and those that do not present hurdles to ex-offenders that may subsequently affect sustainable communities. This Article will not, however, discuss how the length of imprisonment may affect ex-offenders. For an assessment of the correlation between length of imprisonment and employment rates, see Bruce Western et al., The Labor Market Consequences of Incarceration, 47 CRIME & DELINQUENCY 9-13 (2001).
44 For a discussion of which collateral consequences for drug offenders should be abolished, see Demleitner, supra note 15, at 1050-53.
laws relating to other social causes affect the environment. Part IV will also note the hurdles to joint efforts between environmental organizations and ex-offenders’ rights organizations.

II. "INVISIBLE PUNISHMENT"—BARRIERS TO EMPLOYMENT, WELFARE AND HOUSING

A. Employment

"I quickly learned that my four-year sentence was actually a sentence to life. I found out that getting a decent job with a record was not an easy task and my record will be with me wherever I go for the rest of my life."46

Although "[h]aving a legitimate job lessens the chances of reoffending following release from prison. . . . released prisoners confront a diminished prospect for stable employment and decent wages through their lifetimes."47 In the Introduction, this Article mentioned two ways in which the laws pertaining to ex-felons impede their ability to obtain employment: 1) occupational licensing restrictions reduce the employment possibilities for ex-offenders; and 2) many states permit public and private employers to ask about and rely upon arrests and convictions in making employment decisions. This section further describes how these laws hamper the efforts of ex-offenders to secure employment and explains other obstacles ex-offenders encounter in their quest for a job.

1. State Occupational Licensing Laws

"State occupational licensing laws can operate to reduce the availability of employment opportunities for ex-felons."48 Although states differ some-

45 Travis, supra note 34, at 16. Travis refers to "the laws and regulations that serve to diminish the rights and privileges of those convicted of crimes . . . [as] invisible punishment . . . [b]ecause these laws operate largely beyond public view, yet have very serious, adverse consequences for the individuals affected . . . ." Id.
47 FROM PRISON TO HOME, supra note 14, at 31.
48 May, supra note 16, at 188.
what on which jobs are statutorily off-limits to ex-offenders, there is plenty of overlap. For example, in New York, depending on the nature of one's criminal history, an ex-offender may be prohibited from gaining employment in any place beer or liquor is sold for drinking in the place where it is purchased (for example, bars, restaurants), an insurance adjuster's office, a bank, a billiard parlor, any agency connected with horse racing, boxing or wrestling; and from receiving a license as an auctioneer, junk dealer, gunsmith, pharmacist, doctor, physiotherapist, osteopath, podiatrist, dentist, dental hygienist, veterinarian, certified public accountant, undertaker, embalmer, private detective, investigator, watch guard, attorney, billiard room operator, notary public, insurance adjuster, bingo operator, beer or liquor dispenser, real estate broker or salesman, check cashier, and union collector.\(^4^9\) In Colorado, convicted felons cannot become dentists, engineers, nurses, pharmacists, physicians, or real estate agents.\(^5^0\) In California, convicted felons are barred from the professions of law, real estate, medicine, nursing, physical therapy, and education.\(^5^1\) In Virginia, felons may not work in the areas of optometry, nursing, dentistry, accounting, funeral director, or pharmacy.\(^5^2\) These long lists have prompted one commentator to remark that "virtually the only 'profession' open to an ex-felon is that of burglar; the ex-felon is barred... because she or he is presumed to be a person of bad moral character, regardless of the nature of the crime or its relevance to the intended occupation."\(^5^3\)

Occupational licenses serve two purposes. First, they function as a means of raising revenue for the state—the applicant pays a fee and receives a license.\(^5^4\) Second, occupational licenses "protect the public interest by regulating certain activities."\(^5^5\) This is accomplished by ensuring the competency of the licensee as well as his or her "good moral character," "good reputation," or "honest[y] and trustworth[iness]."\(^5^6\) While ex-felons often possess, or can acquire through training and education, the competency to be licensed in a particular occupation, "a felony conviction often prevents an ex-

\(^4^9\) Prisoners' Rights Project, Legal Aid Soc'y, \textit{How to Regain Your Rights} 4 (on file with author).
\(^5^0\) Petersilia, \textit{supra} note 26, at 510.
\(^5^1\) \textit{Id}.
\(^5^2\) \textit{Id}.
\(^5^3\) May, \textit{supra} note 16, at 193.
\(^5^4\) \textit{Id} at 189-90.
\(^5^5\) \textit{Id} at 190.
\(^5^6\) \textit{Id} at 194, 200, 201.
felon from satisfying the ‘character’ requirement for obtaining a license.”

According to Professor Bruce E. May, in his article, *Real World Reflection: The Character Component of Occupational Licensing Laws: A Continuing Barrier to the Ex-Felon’s Employment Opportunities*, “[u]nder many licensing laws, the possession of a felony conviction is an automatic disqualification.” This means that many individuals cannot secure the necessary license, regardless of the “length of time or subsequent good conduct between a criminal conviction and a license application.” In South Dakota, for example, an individual convicted of a felony can never receive a liquor license, even if he can document “twenty years of good moral character subsequent to the conviction . . . .”

Ex-felons who have brought constitutional challenges to occupational licensing laws have generally been unsuccessful. As a result, May argues that more states should “make a ‘direct relationship’ requirement an explicit provision of occupational licensing statutes . . . .” By amending their statutes so that particular licenses can be denied only if there is a “‘direct’ or ‘substantial’ relationship between a prior conviction and the occupation to be licensed,” states can continue to protect the public while also promoting employment opportunities. In addition, May suggests that legislatures, courts,

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57 Id. at 191.
58 Id. at 194.
59 May, supra note 16, at 196.
60 Id.
61 Id. at 204-05 (noting that the pursuit of a particular occupation is not a fundamental right for equal protection purposes and that felons are not considered a suspect class unless a state statute specifically provides for protection). But see Nixon v. Commonwealth, 789 A.2d 376 (Pa. Commw. Ct. 2001) (finding that there was no rational relationship between the classification imposed upon healthcare providers with old criminal convictions, who under state statute were prohibited from working in nursing homes, and a legitimate government purpose). Note, however, that “[i]t is extremely rare for a court to find that a law fails to meet this ‘rational basis’ test.” Manaugh & Kittross, supra note 27, at 499 n. 18.
63 Id. at 206.
64 The State of New York, for example, has taken such an approach. Under New York Correction Law Article 23-A:

No application for any license or employment, to which the provisions of this article are applicable, shall be denied by reason of the applicant’s having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of “good moral character” when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:
and administrative agencies "consider factors that operate to mitigate a felony conviction." May proposes that the effect of a prior conviction for purposes of occupational licensing laws should be eliminated in instances where an individual can show evidence of a full rehabilitation, or in situations where a person has received a pardon or has had the conviction annulled or expunged. May concludes by stating that if we "facilitat[e] the employment of ex-felons, the number of recidivists will be reduced thereby reducing the overall prison population."

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or
(2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

N.Y. CORRECT. LAW § 752 (McKinney 1987 & Supp. 2001-02); see infra Part II.A.2, nn.82, 83. Similarly, in Connecticut:

[A] person shall not be disqualified from employment by the state of Connecticut or any of its agencies, nor shall a person be disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or business for which a license, permit, certificate or registration is required to be issued by the state of Connecticut or any of its agencies solely because of a prior conviction of a crime.

[B] A person may be denied employment by the state or any of its agencies, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, profession or business by reason of the prior conviction of a crime if after considering (1) the nature of the crime and its relationship to the job for which the person has applied; (2) information pertaining to the degree of rehabilitation of the convicted person; and (3) the time elapsed since the conviction or release, the state, or any of its agencies determines that the applicant is not suitable for the position of employment sought or the specific occupation, trade, vocation, profession or business for which the license, permit, certificate or registration is sought.

CONN. GEN. STAT. ANN. § 46a-80(a)-(b) (West 2001).

Id., supra note 16, at 207.

Id. at 207-08.

Id. at 209. Reducing the prison population reduces the burden on state and federal budgets. Id. at 187. If states are really interested in decreasing recidivism, they could use the money they save from a reduced prison population to improve the quality of job training in prisons and job placement for ex-offenders. See infra Part II.A.3; Videotape: Address by Michael Jacobsen, Professor, John Jay College of Criminal Justice, at Building Bridges: From
2. Discrimination in Hiring Based on Arrest and Conviction Records

Where the particular job that an ex-offender seeks is not one that requires a license, the ex-offender frequently finds that employers will not interview, let alone hire, someone who has been convicted of a crime. According to one commentator: "One of the greatest barriers to reintegration is stigmatism—the stigma of having been in prison." Many employers fear those convicted of crimes or believe that ex-offenders will not be reliable employees. Other employers are concerned about hiring applicants with a known criminal past because of the risk of negligent hiring liability.

Federal law does not protect ex-offenders from employment discrimination. Although Title VII of the Civil Rights Act of 1964 makes it unlawful for private employers and state and local governments to discriminate in employment decisions based on race, color, gender, national origin, or religion, it does not grant criminal history protected status in the employment

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68 See, e.g., Barbosa, supra note 22, at 140 (stating that "even when there are no employment restrictions due to a prior criminal record, employers frequently refuse to hire or retain men and women with a criminal record").

69 Videotape: Address by Eric Cadora, Grants Officer, Open Society Institute, Building Bridges: From Conviction to Employment, Central Conn. State Univ. & Dep't of Labor Conference, New Britain, Conn. (Jan. 15, 2003) (on file with author); see also John Hagan & Ronit Dinovitzer, Collateral Consequences of Imprisonment for Children, Communities, and Prisoners, in PRISONS, supra note 26, at 121, 126-28 (noting that "the stigma of imprisonment risks not only making parents into outlaws, but their children as well"); Simon, Miami, supra note 29, at 104 (stating that "the labelling [sic] effects of conviction and punishment have drastic consequences for the likelihood of future employment"); Demleitner, supra note 15, at 1040 ("Lack of an education and of marketable skills combined with the stigma of a criminal conviction make it difficult for many ex-offenders to find employment."); Leavitt supra note 21, at 1314 ("Ex-offenders, particularly felons, suffer stigma in most areas of their lives."); Eric Rasmussen, Stigma and Self-Fulfilling Expectations of Criminality, 39 J.L. & ECON. 519, 540 (1996) (noting that "[t]he private sector . . . unofficially punishes known criminals by stigmatizing them"); Western et al., supra note 43, at 412 (declaring that "[i]ncarceration is stigmatizing"). For a discussion of the consequences of stigma on families of prisoners, see Donald Braman, Families and Incarceration, in INVISIBLE PUNISHMENT, supra note 22, at 117, 129-34.

70 Manaugh & Kittross, supra note 27, at 498; see also Leavitt, supra note 21, at 1286.

71 See Leavitt, supra note 21, at 1286, 1301-06; see also Stephen J. Beaver, Comment, Beyond the Exclusivity Rule: Employer's Liability for Workplace Violence, 81 MARQ. L. REV. 103, 108-10 (1997).

discrimination statutory scheme. Title VII does, however, make it illegal for employers to "use[] . . . employment practice[s] that cause[] a disparate impact on the basis of race, color, religion, sex, or national origin . . . ." Thus, an African-American ex-offender might succeed in a suit against an employer who has a blanket exclusion of all applicants with a criminal history on the grounds that African-Americans incur a disproportionately high number of arrests. The Equal Employment Opportunity Commission's ("EEOC") 1990 Policy Guidance on the Consideration of Arrest Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 sets forth both the steps that an employer would need to take in order to avoid having a policy that could result in disparate impact liability, and the steps that an employer would need to take in order to establish a "business necessity" for a policy that does have a disparate impact.

Despite the lack of federal protection, some states have enacted legislation to limit the use of arrest and conviction records in employment settings. Wisconsin, for example, forbids any "employer, labor organization, [or] employment agency" from discriminating based on arrest or conviction records. The only way for an employer to refuse to hire an individual based

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74 See Leavitt, supra note 21, at 1298-99 (discussing Gregory v. Litton Systems, Inc., 316 F. Supp. 401 (C.D. Cal. 1970), modified on other grounds, 472 F.2d 631 (9th Cir. 1972)). See generally Butterfield, Prison Rates, supra note 16, at A12 (noting that an estimated twelve percent of African-American men ages twenty to thirty-four are in jail or prison in comparison to 1.6% of white men in the same age group); David Cole, No Equal Justice: Race and Class in the American Criminal Justice System 141, 145 (1999) (stating that "[t]he per capita incarceration rate among blacks is seven times higher than among whites; among men aged 25 to 29 the black incarceration rate is ten times the rate for whites" and that 
[b]etween 1986 and 1991, arrests of minority juveniles (under age eighteen) for drug offenses increased by 78 percent, while arrests of nonminority juveniles for drugs actually decreased by 34 percent" (citations omitted)); Editorial, Two Million Inmates, and Counting, supra note 16, at A18 (noting that the rate of incarceration for African-American males between the ages of twenty and thirty-four is more than seven times the rate for white males the same age).
76 Wis. Stat. Ann. § 111.321 (West 1997 & Supp. 2001); see also Leavitt, supra note 21, at 1288 (explaining that Wisconsin law "equates criminal record discrimination with racial or religious discrimination"). According to Leavitt, up until 2000, Hawaii had a similar statutory scheme. Id. at 1288 n.40. In 2000, the Hawaii legislature modified its statute to permit employers to inquire into criminal conviction records after the employee has received
on his criminal history is if the crime in question is "substantially related" to his job duties. Massachusetts does not offer the broad anti-discrimination protection for ex-offenders that Wisconsin does, but it prohibits employers from asking on job applications about arrests that did not result in conviction, first convictions for a specified list of misdemeanors, and convictions of misdemeanors which "occurred five or more years prior to the date of such application for employment . . . ." In New York, public and private employers, employment agencies, and labor organizations may ask about criminal convictions, but may not make pre-employment inquiries about arrests that did not result in a conviction. The New York employer who wishes to inquire about an applicant's criminal convictions may deny an ex-offender a job due to his criminal history only if there is "a direct relationship between . . . the previous criminal offenses and the . . . employment sought" or if granting the applicant the job "would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public." States like Wisconsin, Massachusetts,

a conditional offer of employment. Id. The offer may be withdrawn if the conviction "bears a rational relationship to the duties and responsibilities of the position." HAW. REV. STAT. § 378-2-5 (1993 & Supp. 2000).


Ch. 151B, § 4(9)(ii) (e.g., "drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace").

Ch. 151B, § 4(9)(iii). Despite these protections to ex-offenders, Leavitt notes:

[I]t seems that Massachusetts has decided only to prohibit employers from asking specifically on application forms whether or not a prospective employee has ever been arrested. It does not necessarily prohibit employers from discriminating against employees based on arrests or old convictions that were discovered through an independent source. Requests for some types of criminal history information are forbidden, but use of independently obtained information is unregulated.

Leavitt, supra note 21, at 1291.

See N.Y. EXEC. LAW § 296(18) (McKinney 2001).

N.Y. CORRECT. LAW § 752.

Id. In making this determination, employers should consider the following factors:

(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
and New York are in the minority. Many states offer no statutory protection for ex-offenders.\footnote{Leavitt, supra note 21, at 1290; Posting of Michelle Harrison, supra note 21. One may wonder why arrests which do not lead to convictions are relevant to a discussion geared towards reducing recidivism. If an individual has not been convicted and has not spent time in jail or prison, one may be curious why there would be concern that the individual will be recidivist. The reason is that many individuals do not know the difference between an arrest and a conviction. Whereas a conviction indicates that an individual did commit the crime, an arrest only shows that an individual is suspected of illegal activity. An employer who might be willing to take a chance on an individual with one conviction may be much less inclined if he knows that the individual has also been arrested half a dozen times or if he thinks that those arrests are indeed convictions. According to Samuels and Mukamal, thirty-eight states permit public and private employers to ask about and rely upon arrests. Samuels \& Mukamal, supra note 21. Connecticut, on the other hand, has recently passed legislation \textit{prohibiting employers from inquiring about and/or “deny[ing] employment to a prospective employee solely on the basis that the prospective employee had a prior arrest, criminal charge or conviction, the records of which have been erased . . .”}, CONN. GEN. STAT. ANN. \S 31-51i (West 2003). But such legislation, in and of itself, is insufficient. In order for legislation of this sort to have its desired effect, Leavitt stresses the importance of educating employers and applicants about the new law. See Leavitt, supra note 21, at 1313.}

Obviously, ex-offenders would encounter fewer hurdles to employment if more states adopted legislation to prohibit discrimination based on criminal history.\footnote{Leavitt suggests that New York “could serve as a template for other states in their quest for appropriate legislation.” Leavitt, supra note 21, at 1310. More provocatively, Leavitt encourages Congress to amend Title VII to include criminal history as a protected class. \textit{Id.} at 1307, 1312-13.} If states are unwilling to take this step, the employers should be

\begin{itemize}
\item[(b)] The specific duties and responsibilities necessarily related to the license or employment sought.
\item[(c)] The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
\item[(d)] The time which has elapsed since the occurrence of the criminal offense or offenses.
\item[(e)] The age of the person at the time of occurrence of the criminal offense or offenses.
\item[(f)] The seriousness of the offense or offenses.
\item[(g)] Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
\item[(h)] The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.
\end{itemize}

N.Y. CORRECT. LAW \S 753(1).

\textit{Leavitt, supra note 21, at 1290; Posting of Michelle Harrison, supra note 21.}
encouraged to take advantage of the Work Opportunity Tax Credit Program ("WOTC"). Under the WOTC, employers can receive federal tax credits for hiring ex-felons—"up to 40 percent of the first $6,000 . . . in wages paid during the first 12 months for each new hire," with a $2400 maximum credit. The problem, however, is three-fold. First, many employers are unaware of the tax credit. Second, the program "require[s] an employer to conduct a background check on prospective employees and then register that information with the state." Thus, any effort to encourage employers to participate in the WOTC might undermine the efforts to keep criminal history private. Finally, those employers who are aware of the credit often fire ex-felons after they receive the tax credit. With the program set to expire on December 31, 2003, it is not only important that the program be reauthorized, but that it also include provisions requiring employers to pay back the credit if they fire ex-offenders shortly after receiving it.

In addition to tax credits, employers might be more willing to hire ex-offenders if they felt there would be less risk of "huge settlement awards in negligent hiring cases." Jennifer Leavitt, in her Comment, Walking a Tightrope: Balancing Competing Public Interests in the Employment of Criminal Offenders, suggests first that states cap damages on negligent hiring awards, and second, that states create insurance programs allowing employers to "obtain additional liability insurance at a reduced premium."

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86 Off. of Disability Emp. Pol'y, Dep't of Labor, Work Opportunity Tax Credit Program, available at http://www.dol.gov/odep/pubs/fact/wotc.htm (last visited Mar. 12, 2003) [hereinafter Work Opportunity Tax Credit Program]. Eligible employees must work at least four hundred hours. "A partial credit of 25 percent for certified employees who worked at least 120 hours, but less than 400 hours, may be claimed by the employer." Id.

87 See Videotape: Address by Craig Hoekenga, CEO, Microboard Processing, Inc., Address at Building Bridges: From Conviction to Employment, Central Conn. State Univ. & Dep't of Labor Conference, New Britain, Conn. (Jan. 15, 2003) (on file with author).

88 See Address by Mike Bartley, Director, Regional Job Center, Conn. Dep't of Labor, Address at Building Bridges: From Conviction to Employment, Central Conn. State Univ. & Dep't of Labor Conference, New Britain, Conn. (Jan. 15, 2003) (on file with author).

89 Work Opportunity Tax Credit Program, supra note 86.

90 Address by Bartley, supra note 89.

91 Leavitt, supra note 21, at 1308-09.

92 Id. at 1309 (citing Dermot Sullivan, Note, Employee Violence, Negligent Hiring, and Criminal Records Checks: New York's Need to Reevaluate its Priorities to Promote Public Safety, 72 St. John's L. Rev. 581, 602 (1998)).
Although insurance benefit programs might help quell the fear that can result from the risk of huge settlement awards in negligent hiring cases, like tax-credit programs, insurance programs "would require an employer to conduct a background check on prospective employees and then register that information with the state," thereby discouraging a policy of privacy for arrest and conviction records.

3. Other Considerations

Eliminating some of the licensing restrictions and prohibiting employers from asking applicants about arrests and convictions on job applications would certainly make employment easier for ex-offenders. There are other ways as well, but they involve questions of prison funding and penal reform, and thus are outside the scope of this Article. Nevertheless, it may be worthwhile to mention a couple of them in order to understand the broad range of factors affecting employment for ex-offenders. For example, "involvement in job training and placement programs can lead to employment and lower recidivism. On average, participants in vocational programs [are] more likely to be employed following release and to have a recidivism rate 20 percent lower than nonparticipants." The problem, however, is that "funding for these programs has not kept pace with the recent expansion of the prison population." As another example, consider that when individuals are in prison, they are not employed. This very fact, in and of itself, impedes their ability to gain employment once released. According to Jeremy Travis, Amy L. Solomon, and Michelle Waul, in their monograph, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry:*

95 Id. at 1308-09.
96 FROM PRISON TO HOME, supra note 14, at 32. A study sponsored by the Virginia Department of Correctional Education found that over a fifteen-year period, "recidivism rates were 59 percent lower for those inmates who had participated in and completed prison educational programs versus those who had not participated." Id. at 34 (citing K.A. Hull et al., Analysis of Recidivism Rates for Participants of the Academic/Vocational/ Transition Education Programs Offered by the Virginia Department of Correctional Education, J. CORRECTIONAL EDUC. 51, 2, 256-61 (2000)); see also Demleitner, supra note 15, at 1034 (noting that "offenders who suffer from insufficient education and job training will become likely recidivists").
97 FROM PRISON TO HOME, supra note 14, at 34.
Time out of the labor market interrupts individuals' job experience and prevents them from building important employment skills. During the prison experience, they also become exposed to a prison culture that frequently serves to strengthen links to gangs and the criminal world in general. Advancing in the legitimate labor market is a product of learning through new experiences and opportunities. The same is true for involvement in criminal activity for profit. As time spent in prison increases, the likelihood of participating in the legal economy decreases. 98

What Travis and his co-authors imply is that the very system of incarceration and the length of time that individuals spend incarcerated needs to be reconsidered. 99 Although polls indicate that "Americans, by nearly a three-to-one margin, prefer treatment programs over incarceration for first- and second-time drug offenders," 100 penal reform, like prison funding, raises a different set of philosophical and political questions and thus needs to be addressed separately from the laws governing individuals once they are released from prison.

98 Id. at 31-32 (citations omitted); see also Western et al., supra note 43, at 4 ("[i]ncarceration may undermine the acquisition of job skills among ex-inmates in comparison to others who remain continuously employed").

99 According to Travis and his co-authors, "[w]hen returning prisoners do secure jobs, they tend to earn less than individuals with similar background characteristics who have not been incarcerated." FROM PRISON TO HOME, supra note 14, at 32. "Incarceration reduces wages by about 15%, and reduces rate of wage growth by about one-third." Bruce Western, Professor of Sociology, Princeton Univ., Address at the 12th Annual Symposium on Contemporary Urban Challenges, Beyond the Sentence: Post-Incarceration Legal, Social, and Economic Consequences of Criminal Convictions, Fordham Univ. Sch. of Law (Feb. 20, 2003); see Kilborn, supra note 33, at A16 (citing Western for the proposition that African-American ex-offenders make "10 percent to 30 percent less than other young [African-American high school] dropouts without criminal records"). "Moreover, on average ex-inmates experience no real wage increases through their twenties and thirties, in sharp contrast to never-incarcerated young men whose wages grow rapidly through this period." FROM PRISON TO HOME, supra note 14, at 32. From a purely budgetary point of view, reducing a four-month sentence to three months, or a six-month sentence to five months, for individuals who commit a technical violation of their parole conditions, could save a state millions of dollars without jeopardizing public safety. See Jacobsen, supra note 67.

100 Rubinstein & Mukamal, supra note 22, at 38.
B. Welfare and Housing

According to Gwen Rubinstein and Debbie Mukamal, in their article, Welfare and Housing—Denial of Benefits to Drug Offenders:

Low-income individuals affected by [alcohol and drug] addiction and criminal records . . . need access to public benefits—including welfare, food stamps, Medicaid, and public housing—as they learn to live drug- and crime-free in the community. Without these temporary supports, it is unrealistic to expect full recovery without relapse and recidivism.101

Unfortunately, the federal ban on eligibility for welfare and food stamps for individuals with criminal convictions and the federal laws that allow, and in some cases require, public housing agencies to exclude individuals who have engaged in drug-related criminal activity function as barriers to these desperately needed benefits.

1. Financial Assistance and Food Stamp Eligibility for Individuals with Drug Felony Convictions

When Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”),102 it ended the individual entitlement to welfare and replaced it with a system that limits the duration and conditions for receiving benefits. Whereas before 1996, one could receive benefits for an indefinite period of time, with the enactment of PRWORA, Congress replaced the program called Assistance to Families with Dependent Children (“AFDC”) with one called Temporary Assistance for Needy Families (“TANF”), which imposes a five-year lifetime limit on benefits and requires welfare recipients to work to receive those benefits.103 In addition, and more important to this discussion, PRWORA imposes a lifetime ban on eligibility for TANF assistance and food stamps on individ-

101 Id. at 37.
uals with drug felony convictions (drug use, possession, and distribution offenses). Thus, according to Rubinstein and Mukamal, a person convicted of a violent crime, such as armed robbery, “can qualify for TANF assistance after completing a sentence, but someone with a single felony conviction for drug possession cannot.” Furthermore, the ban applies to pregnant women and people with HIV/AIDS and “continues regardless of a person’s successful job history, participation in drug treatment, avoidance of recidivism, or abstinence from drug use.”

States, however, have some leeway with respect to the bar against drug felons. Although states are prohibited from providing assistance to anyone who is evading prosecution, custody, or confinement for a felony charge or conviction, as well as to those who have violated parole or probation conditions, states may opt out of the ban or modify it. Currently, nineteen states have left the ban intact, eleven states have opted out of the ban, and the rest have chosen to modify the application of the ban, usually “by allowing individuals with drug felony convictions who have undergone drug treatment to receive benefits.”

When the Senate debated the ban, former Senator Phil Gramm (R-TX), stated that “if we are serious about our drug laws, we ought not to give people welfare benefits who are violating the nation’s drug laws.” Unfortunately, the ban’s effect has been to deny benefits to individuals in need of room and board during drug treatment, thereby increasing the likelihood of drug law violations. According to Rubinstein and Mukamal, “[w]ithout access to subsistence benefits, treatment, and safe and sober housing, it is much less likely that [individuals with drug felony convictions] will be able to live

105 Rubinstein & Mukamal, supra note 22, at 41.
106 Id.
108 States must pass legislation making it clear that the state is choosing to opt out of the ban or choosing to modify its application. 21 U.S.C. § 862a(d)(1)(A) (2000).
109 Samuels & Mukamal, supra note 21.
110 Manaugh & Kittross, supra note 27, at 510.
111 Rubinstein & Mukamal, supra note 22, at 42. When the ban was first debated on the Senate floor, it was much broader in scope—“[i]t applied to all federal means-tested benefits, including Medicaid, and lasted a lifetime for individuals with drug felony convictions, and five years for individuals with misdemeanors.” Id. at 41-42.
drug-free in the community and avoid recidivism.” Thus, a law intended to “get tough on crime” may actually have produced the opposite effect. Rubinstein and Mukamal conclude:

The bans on TANF assistance [and] food stamps . . . are counterproductive public policies for addressing addiction and reintegration of people with criminal histories, since they actually make it more difficult for low-income individuals to afford treatment [and] obtain food and employment . . . as they transition back into the community. In continuing efforts to enhance the success of welfare reform, Congress should eliminate the ban on TANF assistance and food stamps to individuals with drug felony convictions. In the absence of federal change, states should adopt legislation to opt out of the ban or narrow its scope.

2. Housing Assistance for Individuals with Drug and Criminal Histories

Unlike the ban on eligibility for TANF assistance and food stamps for drug felons, “federal law does not, except in very specific circumstances, disqualify people from receiving housing assistance merely because of their criminal record.” Federal law does, however, permit “providers of Section

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112 Id. at 42. Rubinstein and Mukamal quote an ex-offender in Pennsylvania:
I have been clean now for three years and six months with G—d’s help, and I am trying to stay that way, but with no help for people like me it is very hard not to go back to that way of life. I want people to realize that is why people do time, get out and do it again. They can’t survive any other way.

Id. at 42-43 (quoting Joan Loviglio, DA, Others Urge State to Extend Welfare Benefits to Ex-Felons, ASSOCIATED PRESS, June 16, 2001).

113 Id. at 49.

114 Manaugh & Kittross, supra note 27, at 513. Manaugh and Kittross note that under 42 U.S.C. § 1437n(f) (2000), individuals who have been convicted of manufacturing or otherwise producing methamphetamine on the premises of public or Section 8 housing will be permanently barred from living in public housing projects or receiving Section 8 assistance. Id. In addition, just as states are prohibited from providing financial assistance and food stamps to anyone who is evading prosecution, custody, or confinement for a felony charge or conviction, as well as to those who have violated parole or probation conditions, public housing assistance will also be denied or revoked under these circumstances. Id. (citing 42 U.S.C. § 1437f(d)(1)(B)(v)(I)-(II) (2000)).
8 and other federally assisted housing to exclude other individuals" who have engaged in any drug-related or violent criminal activity. Furthermore, whereas the ban on TANF assistance and food stamps applies only to the individual with the conviction, meaning that children, for example, retain their eligibility even if their parents do not, public housing authorities may deny housing to households if a member [of the household] has engaged in any drug-related or violent criminal activity or any other criminal activity that would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents if the criminal activity occurred a "reasonable" time before the person seeks admission.

Households that have already secured public housing risk eviction in situations where family members or guests engage in drug-related activity of which the tenant had no knowledge, could not foresee, or could not control. According to Rubinstein and Mukamal:

Because the laws authorize housing authorities to deny or evict entire families for the criminal behavior of a single member, whether for a current or a previous conviction, families who live in public housing cannot allow a relative recently released from prison to live with them without

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115 Rubinstein & Mukamal, supra note 22, at 44.
116 Id. at 41.
117 Id. at 45-46.
118 See Dep't of Housing & Urban Dev. v. Rucker, 535 U.S. 125 (2002); see also Barbosa, supra note 22, at 139 (explaining that the Rucker Court "upheld lease provisions allowing public housing tenants to be evicted from their homes as the result of actions by family members, guests or visitors, even if the tenants do not have any knowledge or have taken all steps to prevent the problem"); Demleitner, supra note 15, at 1036 (noting that under Rucker, there is no "innocent owner defense"—"the existence of an illegal drug user . . . will cause the entire household to be evicted and barred from public housing"). Under the Housing Opportunity Program Extension Act of 1996, public housing authorities may evict individuals who engage in drug-related criminal activity regardless of whether the activity occurs on or off the public housing premises. Pub. L. No. 104-120, § 9(a) (1996) (codified at 42 U.S.C. § 1437d(k)(l)). In addition, public housing agencies may evict a tenant regardless of whether the tenant has actually been arrested or convicted. 24 C.F.R. §§ 5.861, 882.518(c)(3)(i), 966.4(l)(5)(iii). In theory, this flexibility allows public housing authorities
putting the family’s tenancy in jeopardy. Without access to
decent, stable, and affordable housing, the likelihood of an
ex-offender being able to obtain and retain employment and
remain drug- and crime-free is significantly diminished. 119

Or, in the words of a recently released felon who was told by his mother that
he could not come and visit her in her public housing project: “I’ve served my
time, I’m out, but I’m never going to be allowed to be part of society again.
. . . So what do you want me to do? I’m going to end up doing something
wrong again.” 120 Thus, Rubinstein and Mukamal suggest:

Local housing authorities should use their discretion to adopt
fair and balanced admission and eviction policies that con-
sider individual circumstances and reinforce the community’s
goals of encouraging people to remain in recovery and
facilitating the successful reintegration of returning offenders
into the community. Blanket policies that deny decent, safe,
and affordable housing to individuals with criminal records
and their families for long periods of time create challenges
not only for the returning offender and his or her family but

119 Rubinstein & Mukamal, supra note 22, at 47. The
number of evictions, however, has risen because “public housing agencies are now rewarded
. . . for . . . adopt[ing] policies and procedures to deny admission to [applicants with criminal
backgrounds] and evict individuals who engage in activity considered detrimental to the
public housing community.” Id. citing (24 C.F.R. § 966.4(l)(5)(iii)). Tenants who are evicted
from federally assisted housing because of drug-related criminal activity lose their eligibility
for federally assisted housing for a period of three years. 42 U.S.C. § 13661(a).

120 Butterfield, supra note 19, at 18 (quoting Mr. Maurice Stewart who served 14 years in
prison).
for the community that must absorb the criminal justice, shelter, and child welfare costs as well.\textsuperscript{121}

As one can see from this Part, persons convicted of a crime are exposed to a number of additional legal penalties and disabilities beyond incarceration. These collateral consequences of conviction include barriers to employment and public benefits and housing—barriers which may be insurmountable, leaving released prisoners with no recourse but to re-offend. While the fact that these collateral penalties are fundamentally unfair to the ex-offender should be reason enough to re-think the laws involved, the effects of imprisonment on families, communities, and the environment provide additional compelling reasons for re-examining the laws placed upon those with prior criminal convictions. The next Part focuses on how the indiscriminate imposition of collateral penalties burdens communities and the environment.\textsuperscript{122}

III. THE IMPACT OF CRIME, INCARCERATION, AND THE FEAR OF CRIME ON COMMUNITIES AND THE ENVIRONMENT

So far, this Article has established that the obstacles to employment, housing, and benefits increase the chances of recidivism. That crime is undesirable in and of itself is obvious. What is less apparent is how the presence of crime or simply the fear of crime in a community, as well as the incarceration of ex-offenders who re-offend, hinders efforts at sustainable development and environmental protection. This Part offers five ways in which this may occur.

\textsuperscript{121}Rubinstein & Mukamal, supra note 22, at 49 (emphasis added).

\textsuperscript{122}For a discussion of the effect of imprisonment on the families of those incarcerated, see Braman, supra note 69, at 117-35 (discussing how “[t]he impact of incarceration on families ranges from lost income and help with child care to diminished relationships and social isolation” and concluding that “incarceration harms the families of prisoners as much as, if not more than, the prisoners themselves”); Todd R. Clear, The Problem with “Addition by Subtraction": The Prison-Crime Relationship in Low-Income Communities, in INVISIBLE PUNISHMENT, supra note 22, at 131, 187 (finding that “children who grow up under prosocial normative expectations and structured availability of time will be less inclined to engage in criminal conduct”); Hagan & Dinovitzer, supra note 69, at 122 (stating that imprisonment engenders negative consequences “for families who suffer losses both emotional and financial; [and] for children who suffer emotional and behavioral problems due to the loss of a parent, financial strain, and possible displacement into the care of others”).
In Section A, this Article provides a definition of "sustainable community" and describes the characteristics of a sustainable community. It then proceeds to explain how crime undermines the health and stability of communities and makes them less able to address other social and environmental concerns. Section A also describes how the incarceration of ex-offenders erodes a community's workforce, making the community less economically sustainable and forcing businesses to relocate to the sprawling suburbs. Following the pattern of Section A, Section B.1 begins by providing a definition of sprawl and describing the characteristics of sprawl. It then proceeds, in Section B.2, to outline the impact of sprawl on urban communities and the environment. Section B.3 attempts to show how crime, or even just the concern that crime is occurring, encourages people to leave the cities, contributing to sprawl. Finally, Section C details the environmental effects of driving SUVs and explains how the fear of crime is a major reason for their popularity.

A. The Effects of Conviction and Imprisonment on Communities

The wide range of definitions and goals of "sustainable communities" and "sustainable development" have generated much frustration and confusion.\textsuperscript{123} Acknowledging that the terms are evolving and debatable, this Article adopts the description of "sustainable community" set forth by Beth E. Lachman, in her book, \textit{Linking Sustainable Community Activities to Pollution Prevention: A Sourcebook}.\textsuperscript{124} For Lachman, a "sustainable community" is one which "recognizes that economic, environmental, and social issues are interdependent and integrated."\textsuperscript{125} To further explicate the interrelatedness of these issues, Lachman analogizes a sustainable community to a three-legged stool: "The legs of the stool represent economic, social, and environmental components and the seat is sustainability. If any of the three are not healthy, then the stool falls over and sustainability cannot ever be achieved."\textsuperscript{126}

\textsuperscript{123} See, e.g., Amit Kapur & Thomas E. Graedel, \textit{Production and Consumption of Materials}, in \textit{STUMBLING TOWARD SUSTAINABILITY} 63 (John C. Dernbach ed., 2002) (noting that "[t]he term 'sustainable development' has been overused, without any definite knowledge of what constitutes a sustainable world and how we can proceed in that direction").


\textsuperscript{125} Id., at \url{http://www.rand.org/publications/MR/MR855/MR855.ch2.html#2}.

\textsuperscript{126} Id.
Looking more closely at the legs of the "sustainability stool," Lachman explains:

Economic issues include good jobs, good wages, stable businesses, appropriate technology development and implementation, business development, etc. If a community does not have a strong economy, then it cannot be healthy and sustainable over the long term.

From an environmental standpoint, a community can be sustainable over the long term only if it is not degrading its environment or using up finite resources. Environmental concerns include protecting human and environmental health; having healthy ecosystems and habitat; reducing and/or eliminating pollution in water, air, and land; providing green spaces and parks for wildlife, recreation, and other uses; pursuing ecosystem management; protecting biodiversity; etc.

A community must also address social issues. If a community has significant social problems, such as serious crime, then it cannot be healthy and stable over the long term. Furthermore, such a community probably will not be able to address other key community issues, such as environmental problems, because it is so busy dealing with its social problems. Social issues addressed in sustainable community efforts include education, crime, equity, inner-city problems, community building, spirituality, environmental justice, etc.127

According to Lachman, then, crime, in and of itself, is uncharacteristic of a sustainable community. In addition, Lachman reasons, crime saps the community of the time, energy, and resources to address any environmental problems it may have or to take the steps necessary to prevent future environmental degradation. This idea is echoed by Professor J.B. Ruhl, in his article, Sustainable Development: A Five-Dimensional Algorithm for Environmental Law: "[t]here is . . . strong evidence that environmental protection is less likely when regional economic conditions are substandard . . . [S]urges of economic growth . . . go hand in hand with increased environmental

127 Id.; see also Simon, Miami, supra note 29, at 98, 115 (declaring that "crime poses a threat to the social sustainability of cities" and that crime is "one of the dominant challenges to sustainable cities").
Thus, thinking back to Part II of this Article, the argument looks like this: Because the laws pertaining to ex-offenders impede their ability to secure employment, housing, and benefits, causing them to commit crimes that they might not otherwise have committed, and because crime makes communities unstable and prevents them from devoting resources to environmental problems, then the laws governing ex-offenders undermine sustainable communities and encumber sustainable development.

But there is another way in which the laws pertaining to ex-offenders weaken the stool of sustainability. According to John Hagan and Ronit Dinovitzer, in their article, Collateral Consequences of Imprisonment on Children, Communities, and Prisoners, “when young minority males are taken from their communities and imprisoned, they become a novel resource in the investment/disinvestments equation that shifts resources from one location to another, disadvantaging the minority community to the relative advantage of another community, usually in a majority group setting.” In other words, when an individual reoffends, not only does the community suffer from the damage to the victim, but the incarceration of the offender removes a valuable asset from the community, “affect[ing] the community capacity of those who are left behind.” According to Hagan and Dinovitzer, “[m]any minority ghettos in America have lost the workforce that is necessary to sustain viable labor market activity.” Without a strong, and reliable workforce, some businesses may leave the community. Businesses elsewhere that are considering expanding will look towards other communities as possible sites. With fewer businesses and hence fewer jobs with good wages, the already diminished employment prospects of ex-offenders de-

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129 Hagan & Dinovitzer, supra note 69, at 133.
130 Clear, supra note 122, at 182. See also Jonathan Simon, Introduction: Crime, Community, and Criminal Justice, 90 CAL. L. REV. 1415, 1417 (2002) (“In poor and minority communities that experience the highest rates of incarceration, the removal of large numbers of adult males from the community threatens the formation of families and the reproduction of informal social order, and it may actually impede the ability of those communities to informally control crime.”) [hereinafter Simon, Crime].
131 Hagan & Dinovitzer, supra note 69, at 135.
132 PIETRO S. NIVOLA, LAWS OF THE LANDSCAPE: HOW POLICIES SHAPE CITIES IN EUROPE AND AMERICA 7 (1999) (stating that “businessmen frequently identify crime as the major impediment to locating in the inner city”).
crease even more, the chance of recidivism increases, and the system continues to spiral downward.

This is not to suggest that those who commit crimes should not be incarcerated. Obviously, low levels of incarceration will benefit neighborhoods and communities by increasing public safety. But when incarceration reaches a certain level in an area that already struggles for assets, the effects of imprisonment undermine the building blocks of the community.

Thus, two logical chains or syllogisms prove the same conclusion. In the first, certain laws make it more difficult for an ex-offender (whether he has been incarcerated or merely placed on probation) to find decent employment and housing. These obstacles increase the chances that the ex-offender will commit another crime. Crime undermines the health and stability of communities and makes them less able to address other social and environmental concerns. The laws pertaining to ex-offenders therefore hamper sustainable communities. In the second, certain laws make it more difficult for an ex-offender to find decent employment and housing. These obstacles increase the chances that the ex-offender will commit another crime. When the ex-offender reoffends and is incarcerated, he diminishes the community's workforce. If incarceration rates are too high, businesses will not be able to survive and will leave. Businesses that were considering

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133 According to Hagan and Dinovitzer, the estimated cost of corrections in the United States is now about $32 billion a year (in comparison to $7 billion in 1986 and $20 billion in 1996). Hagan & Dinovitzer, supra note 69, at 130. This increased spending on prisons withdraws “money from educational institutions charged with the responsibility for building human capital through the transmission of knowledge and skills to students.” Id. at 131. While few would argue that incarceration is inappropriate in instances of violent crime, “[m]ore than half (59 percent) [of police chiefs] believe[] that sentencing drug users to court-supervised treatment programs [is] more effective than sending them to prison or jail.” Rubinstein & Mukamal, supra note 22, at 38. Thus, if drug offenders could receive some form of punishment other than incarceration, this could help decrease the cost of prisons. The money could then be used for education in less affluent communities, thereby increasing the employment opportunities of the children and decreasing the chances that the children will commit crimes.  

134 See Clear, supra note 122, at 181-83.  

135 This author is somewhat reluctant to use the word “syllogism” because of its pejorative connotations. The second definition of “syllogism” in the Oxford English Dictionary is “[a]n argument or something ironically or humorously regarded as such, esp. a specious or subtle argument or piece of reasoning . . . .” OXFORD ENGLISH DICTIONARY 447 (2d ed. 1989) (emphasis in original). But in the field of logical reasoning, the Law of Syllogism, also called the Law of Transitivity, states: if \( p \implies q \) and \( q \implies r \) are both true, then \( p \implies r \) is true. This is precisely the type of argument this author is making.
relocating to the community will move elsewhere. The economic leg of the sustainable community stool will weaken. The laws pertaining to ex-offenders therefore hinder sustainable communities. Looking at the second of these logical chains, one could also infer a third: Certain laws make it more difficult for an ex-offender to find decent employment and housing. These obstacles increase the chances that the ex-offender will commit another crime. When the ex-offender reoffends and is incarcerated, he diminishes the community's workforce. If incarceration rates are too high, businesses will not be able to survive and will leave, often to sprawling suburban areas. Sprawl has negative impacts on urban communities and the environment. The laws pertaining to ex-offenders therefore hinder sustainable communities and degrade the environment. In order for this third logical chain to follow, however, it is necessary to prove that sprawl negatively impacts urban communities and the environment. The next Section begins by discussing how sprawl weakens central-city neighborhoods and brings about environmental degradation. The Section following that goes on to explore how crime and the fear of crime triggers people and businesses to leave the cities for the sprawling suburbs.

B. Sprawl

Under the second line of argument discussed in the previous Section, high incarceration rates will deprive a community of its workforce, thereby forcing businesses to leave. When businesses leave a city community and move out to the suburbs, not only do they undermine the economic sustainability of the community that they have left, but as the third line of argument suggests, they contribute to the unsustainable practice of sprawl. While an in depth discussion of the causes and consequences of sprawl is beyond the scope of this Article, this Section will begin by defining sprawl, describing its characteristics, and explaining why it has an adverse affect on people, communities, and the environment. From there, this Section will explain that when businesses leave a community, they do so not only because of a de-

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136 See Brian Reilly Rapporteur, Encouraging Sustainable Communities 3, available at http://www.cpn.org/topics/environment/encouraging.html (last visited Sept. 13, 2003) ("the costs of sprawl, frequently unquantified and unrecognized, are typically deferred and externalized, often creating a burden to be borne by future generations, the environment and those remaining in the urban core").
creased workforce as argued above, but because of high crime rates and the fear of crime.

1. Definition and Characteristics of Sprawl

According to Gregory D. Squires, editor of Urban Sprawl: Causes, Consequences & Policy Responses, “[s]prawl can be defined as a pattern of urban and metropolitan growth that reflects low-density, automobile-dependent, exclusionary new development on the fringe of settled areas often surrounding a deteriorating city.” As Squires further explains:

Among the traits of metropolitan growth frequently associated with sprawl are unlimited outward extension of development; low-density housing and commercial development; leapfrog development, “edge cities,” and more recently “edgeless cities”; fragmentation of land use planning among multiple municipalities; reliance on private automobiles for transportation; large fiscal disparities among municipalities; segregation of types of land use; race and class-based exclusionary housing and employment; congestion and environmental damage; and a declining sense of community among area residents.

While it may be obvious from this list of characteristics why sprawl is the antithesis of sustainable development, it is worthwhile to spell out how sprawl undermines communities and exacerbates environmental problems.

2. Impact of Sprawl on Urban Communities and the Environment

Discussing the impact of sprawl on urban communities is a bit like debating whether the chicken preceded the egg. As Paul A. Jargowsky asks:

Did the decline of the central cities inspire suburban sprawl by giving the middle class ample reason to flee the frightening

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137 Gregory D. Squires, Urban Sprawl and the Uneven Development of Metropolitan America, in Urban Sprawl: Causes, Consequences, & Policy Responses 1, 2 (Gregory D. Squires ed., 2002).

138 Id.
poverty and social disorder of the inner city? Or did suburban sprawl erode the tax base and siphon off middle-class families and institutions, thereby destabilizing central-city neighborhoods and causing their decline?  

Without addressing what set the process in motion, this Article has suggested that at some level, businesses leave or fail to relocate to urban areas because of their social disorder. According to Squires, once the process of sprawl is underway, it is difficult to reverse. “Sprawling development requires large infrastructure investments for roads, sewer systems, schools, and other public services. At the same time, infrastructure within central areas goes unused and, in some cases, deteriorates due to inadequate public investment.” In other words, “tax money [winds up] subsidiz[ing] new sprawling developments, rather than improving our existing communities.” These existing communities thus find themselves in a Catch-22. Without the resources to improve their lot, existing communities are unable to keep and attract businesses. But without businesses to provide employment and contribute to the tax base, the inner city communities lack the resources to improve their conditions. This Catch-22 or cycle produces great degrees of separation between the income classes, where the rich and middle class are concentrated on the outskirts of the city, while the poor are geographically and socially isolated in the central city.  

We will return to this chicken-and-egg problem in Part III.B.3. For now, it is sufficient to recognize that sprawl has an adverse effect on urban communities. The relationship of sprawl to the environment, however, poses no such causal confusion. From an environmental perspective, it is clear that
sprawl] has a harmful effect on air and water quality, reduces open space, and contributes to the loss of biodiversity.

a. Air Quality

The outward expansion of metropolitan areas encourages an automobile-dependent lifestyle. Sprawl lengthens trips and forces individuals to drive everywhere. According to the Sierra Club, "[t]he average American driver spends 443 hours per year—the equivalent of fifty-five eight-hour workdays—behind the wheel. Residents of sprawling communities drive three to four times as much as those living in compact, well-planned areas." With more drivers on the road spending more time in their cars, air pollution increases, causing "a range of diseases including asthma, lung cancer, and heart problems."

144 Note that "[f]amilies in sprawling neighborhoods spend $1,300 more each year on transportation than those in denser areas." Minnesota Sierra Club, 10 Reasons Sprawl is Bad for Your Health, at http://minnesota.sierraclub.org/sprawl_10_reasons_sprawl_is_bad.htm (last visited Sept. 11, 2003) [hereinafter 10 Reasons]. In addition, automobile-reliance "force[s] the exploration for oil into increasingly environmentally sensitive areas." David D. Ciezlewicz, The Environmental Impacts of Sprawl, in URBAN SPRAWL, supra note 137, at 23, 35. For a report on international energy companies' attempts to drill in the ecologically sensitive jungle regions of Ishpingo, Tumbococha and Tiputini in Ecuador, see Juan Forero, Seeking Balance: Growth vs. Culture in Amazon, N.Y. TIMES, Dec. 10, 2003, at A8. For a critique of efforts to drill in the Arctic National Wildlife Refuge, see Christopher R. Clements, Note, No Blood for Oil? United States National Security, Oil, and the Arctic, 28 WM. & MARY ENVTL. L. & POL'Y REV. 87 (2003).

145 Longer travel times can have an adverse affect on human health. For example, according to the Minnesota Sierra Club, "[e]very minute a heart-attack victim waits for an ambulance reduces the chance of survival by 10 percent." 10 Reasons, supra note 144.

146 According to Squires, "[s]prawl undercuts civic engagement due to the time spent commuting . . . ." Squires, supra note 137, at 13.

147 Sprawl Factsheet, supra note 140; see also F. Kaid Benfield & Michael Replogle, Transportation, in STUMBLING TOWARD SUSTAINABILITY, supra note 123, at 647, 653 ("Americans now spend roughly one of every eight waking hours in their cars."); Squires, supra note 137, at 12 (noting that “[t]raffic congestion results in more people spending more time in their automobiles”).

148 Squires, supra note 137, at 11; Hank Dittmar, Sprawl: The Automobile and Affording the American Dream, in SUSTAINABLE PLANET: SOLUTIONS FOR THE TWENTY-FIRST CENTURY 109, 111 (Juliet B. Schor & Betsy Taylor eds., 2002) ("[l]ink[ing] sprawl and driving to increases in asthma mortality and to a precipitate decline in physical activity, which is in turn a factor in growing rates of heart disease and childhood obesity"); see also Ciezlewicz, supra note 144, at 29 (noting that “[w]e are starting to give back air quality gains because sprawling
b. Water Quality

Sprawling new developments impair water quality in a number of ways. First, they destroy more than one hundred thousand acres of wetlands each year. "Since wetlands can remove up to 90 percent of the pollutants in water, wetlands destruction leads directly to polluted water." Second, impervious surfaces like roads and parking lots contain automotive fluids, such as oil, grease, engine coolants, and antifreeze, as well as grit and roadsalt, which accumulate and flow down into streams and lakes, polluting an area's waterbodies. Furthermore, suburban lawns are treated with more

devolution patterns demand more driving""); Richard J. Jackson & Chris Kochtitzky, Creating a Healthy Environment: The Impact of the Built Environment on Public Health, Sprawl Watch Clearinghouse Monograph Series (2002), available at http://www.sprawlwatch.org/health.pdf. Jackson and Kochtitzky note that in the summer of 1997, "smog pollution was responsible for more than 6 million asthma attacks, 159,000 visits to emergency rooms for treatment of asthma attacks, and 53,000 asthma-related hospitalizations." Id. at 7. They also point out that during the Atlanta Olympic Games in 1996 when automobile use was reduced by 22.5%, the number of admissions to emergency rooms and hospitals for asthma-related complications decreased by 41.6%. Id. at 3.

The increased reliance on automobiles has two other potentially life-threatening effects. First, the more one drives, the more likely it is that that individual will be one of the 43,000 annual traffic fatalities. 10 Reasons, supra note 144. Second, the additional time spent in automobiles due to traffic congestion increases the "occurrence of road rage leading to conflicts—and increasingly killings—among drivers." Squires, supra note 137, at 12. To illustrate this point, Squires recounts the following incident:

One fall afternoon in 1999, two soccer moms played cat-and-mouse games during the homebound rush hour on the increasingly congested Interstate 65 outside of Birmingham, Alabama. After tailgating, lane changing, and brake slamming over four miles of expressway, they came to a red light. Gena Foster jumped out of her sport-utility vehicle and approached Shirley Henson in her Toyota 4Runner. Henson grabbed her .38 caliber revolver, lowered her window, and shot Foster to death. Id. at 1. Thus, one could argue that no only does crime lead to sprawl, but sprawl leads to crime.

Sprawl Factsheet, supra note 140. The destruction of wetlands—nature's "flood-absorbing sponges"—also increases the risk of flooding. Id. "In the last eight years, floods in the United States killed more than 850 people and caused more than $89 billion in property damage. Much of this flooding occurred in places where weak zoning laws allowed developers to drain wetlands and build in floodplains." Id.

Id.; see also Squires, supra note 137, at 11 (stating that "[w]ater quality erodes as development increases pollution that poisons rivers, lakes, and other bodies of water"). See Ciezlewicz, supra note 144, at 32; Avi Brisman, Considerations in Establishing a Stormwater Utility, 26 S. ILL. U. L.J. 505, 510 (2002) (stating that "[l]eaks of motor oil,
pesticides per acre than croplands. If applied improperly or before an intense storm, these pesticides can be lost in runoff, impairing water quality and exposing individuals to greater risks of cancer and damage to neurological and reproductive systems.

c. Open Space and Loss of Biodiversity

Sprawl replaces more than one million acres of parks, farms and open space each year with strip malls and freeways. By destroying farmland—often local farmland that requires fewer pesticides and preservatives—consumers’ food choices become more limited. In addition, sprawl’s penetration into forested areas increases deer population, which subsequently

gasoline, and coolants onto roads and parking lots can cause toxic spikes in the concentration of cobalt, iron, nitrogen, lead, zinc, cadmium, and copper when these metals are transported in runoff to receiving waters); Dittmar, supra note 148, at 111 (stating that “[a]utomobile by-products including brake and tire particulates, air toxins and pollutants, and road chemicals run off into groundwater and are . . . a major source of both ground and surface water pollution”); PETER H. LERHNER ET AL., STORMWATER STRATEGIES: COMMUNITY RESPONSES TO RUNOFF POLLUTION 32-33 (Natural Resources Defense Council ed., 1999). Transportation-related surfaces, such as roads and parking lots, also increase the volume and velocity of runoff. This can lead to flooding, a problem exacerbated by the destruction of wetlands. Id. at 30.  

152 10 Reasons, supra note 144.
153 LERHNER, supra note 151, at 34-36; see also Brisman, supra note 151, at 510-11 (stating that “improper or excessive use of fertilizers and pesticides, such as 2,4-D and chlorophyrifos in home landscaping, especially if applied before an intense storm, can greatly impair urban water quality”); Ciezlewicz, supra note 144, at 24 (noting that “[r]unoff from construction site erosion, chemicals used on sprawling suburban lawns, and gasoline and oil residue from parking lots and roads are leading causes of water pollution”).  

154 See 10 Reasons, supra note 144.
155 Sprawl Factsheet, supra note 140; see also Ciezlewicz, supra note 144, at 26 (“we are losing prime farmland at the rate of 46 acres per hour”); Dittmar, supra note 148, at 112 (stating that “suburbanization [has] unintentionally caused the rapid loss of farmland and open space, [and] destruction of vital habitat for hundreds of plant and animal species”); Peter Forbes, Another Way of Being Human, in SUSTAINABLE PLANET, supra note 148, at 223, 223 (declaring that “[s]prawl is gobbling up the American countryside at 365 acres per hour. Over three million acres of forests, farms, and wetlands—the places that inspire our remembering—will be paved over this year alone”); Squires, supra note 137, at 11-12 (“[f]arm and forestland itself is consumed as residential and commercial development proceeds outward”).  

156 10 Reasons, supra note 144.
decreases biological diversity. As David J. Cieslewicz, in The Environmental Impacts of Sprawl, explains:

[a]s rural subdivisions and estates replace farms, and as new roads are built to accommodate that growth, more "edge habitat," or places where wooded areas meet fields or lawns, is created. Deer thrive in edge habitat. In thick forest, food is scarce because branches are too high for deer to reach while the forest floor is dark and relatively little vegetation grows there. Open fields are good for foraging but they do not provide cover. But a patchwork of subdivisions and farm fields is perfect for deer because refuges are mixed with forage opportunities.

Rising deer population poses "a problem for biological diversity because deer have a voracious appetite for trees, shrubs, and herbaceous plants. . . . Heavy browsing by dense deer populations reduce not just the diversity of plants, but also the diversity of mammals that depend on them." Besides a negative impact on biological diversity, a growing deer population can adversely affect human health. The number of car-deer accidents has skyrocketed in the past twenty-five years and "deer-tick-borne Lyme disease has soared from 120 cases annually to almost 18,000 in the past 20 years."

3. High Crime Rates and the Fear of Crime as a Cause of Sprawl

The latter half of the previous subsection outlined how sprawl negatively impacts the environment. Now, it is time to return to the question of what

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157 See Ciezlewicz, supra note 144, at 34-35.
158 Id. at 34. Ciezlewicz also notes that "as land ownership becomes more fragmented, hunting opportunities decrease," id., thereby causing the deer population to increase.
159 Id. at 35. "Studies indicate that some bird species disappear in areas of high deer concentrations." Id.
160 Id. at 34 (noting that "[i]n Wisconsin, deer accounted for 1 in 20 vehicle accidents in 1978, but 1 in 6 by 1995"). Ciezlewicz is careful to point out, however, that the size of the deer population should not bear all the blame for the increase in car-deer accidents. The growth of human populations and the concomitant increase of traffic on rural highways has also caused the spike in car-deer accidents. Id.
161 10 Reasons, supra note 144.
factors contribute to the problem of sprawl. Implicit in this discussion is the issue of whether sprawl has caused central-city neighborhoods to decline or whether sprawl is the result of poor, crime-infested inner cities. In Part III.A, this Article suggested that crime erodes the available workforce, causing businesses to leave many urban areas and discouraging new businesses from relocating to urban areas. In Part III.B.2, this Article suggested that the problem is more complex—that regardless of the origin, sprawl undermines sustainable communities. For the purposes of this Article, it is unnecessary to resolve the debate and ascribe the initial catalyst of sprawl to one particular phenomenon. Rather, it is sufficient to understand that once the process is in motion, sprawl destabilizes urban communities and that one of the contributors to sprawl is crime and the fear of crime. This subsection will discuss how crime and the fear of crime further the outward expansion of metropolitan areas.


There is a reasonably clear connection between urban crime rates and the flight of households and businesses to suburbs. A city nets a loss of one resident for every additional crime committed within it. Attitudinal surveys have regularly ranked public safety as a leading concern in the selection of residential locations.¹⁶²

This point is echoed in Michael J. Stewart’s article, *Growth and Its Implications: An Evaluation of Tennessee’s Growth Management Plan*: “Homeowners move outward as they find newer, bigger homes in low-density communities with good schools and low crime rates more attractive and less expensive than city living.”¹⁶³ Despite this correlation between crime and the

¹⁶² NIVOLA, supra note 132, at 7. But see KATHARINE L. BRADBURY, URBAN DECLINE AND THE FUTURE OF AMERICAN CITIES 188 (1982) (finding that “higher crime in central cities is a factor motivating households to move, though it is perhaps not as important as is commonly believed”).

¹⁶³ Michael J. Stewart, *Growth and Its Implications: An Evaluation of Tennessee’s Growth Management Plan*, 67 TENN. L. REV. 983, 1000 (2000) (citing Rachel L. Schowalter, *Reuse, Restore, Recycle: Historic Preservation as an Alternative to Sprawl*, 29 ENVTL. L. REP. 10418, 10420 (1999)); see also Rappoteur, supra note 136, at 3 (stating that “[s]prawl is driven by a perception that costs are lower in outlying areas and that new communities offer a respite from problems associated with urban areas, such as overcrowding, crime and high
departure of households and businesses to the suburbs, an inner-city need not have high crime rates in order for the “flight from blight”\(^\text{164}\) to occur. Although residents of a metropolitan region will often respond “to high levels of crime . . . by leaving the city altogether,”\(^\text{165}\) all that is required for the exodus to occur is a **fear of crime**. If residents **believe** that crime is occurring in the urban area where they live, they may leave, regardless of whether this perception is true. As Professor Jonathan Simon, in *Miami: Governing the City through Crime*, explains:

> [F]ear of crime, in distinction to crime itself, can undermine sustainable cities. Fear of crime not only leads many residents to abandon central cities for outlying suburbs, but reduces the role that remaining residents play in their communities. Fearful of becoming victims, residents often abandon the convenience of local businesses for the perceived safety of suburban shopping malls. As a consequence, both homeowners and business owners are reluctant to sink more investment in properties whose value may be permanently limited by fear of crime.\(^\text{166}\)

According to Simon, the fear of crime really has two effects. First, it encourages residents of inner cities to move to the sprawling suburbs.\(^\text{167}\) Second, it discourages those who stay in the cities from shopping locally.\(^\text{168}\)

\(^{164}\) Squires, *supra* note 137, at 8 (stating that “[f]amilies choose to live in those communities that offer the most attractive bundle of goods the families can afford. The quality of local schools, crime rates, access to retail shops, availability of parks and playgrounds, fire and police protection, and transportation networks are among the amenities most families consider”).

\(^{165}\) *NIVOLA, supra* note 132, at 91.

\(^{166}\) *Miami, supra* note 29, at 107.

\(^{167}\) *Id.* at 108.


\(^{168}\) In the United Kingdom, research has found that crime results in another type of unsustainable practice in the cities: “It makes people reluctant to walk or to take public transport.” UK Gov’t Sustainable Dev., *Building Sustainable Communities, Reducing Crime*
Having lost their consumer base, “traditional businesses, unable to compete with large ‘big box’ outlets and suburban shopping malls, move outward where there are more consumers.” Essentially, Simon concludes, “[t]he new urban landscape (including the suburbs) is being shaped by this fear...” Nivola’s conclusion is even more foreboding: “there is simply no way this country can end the headlong retreat of families and firms from...cities without an even sharper and sustained reduction in their levels of violence.”

One way in which this violence might be reduced is if the ex-offenders who contribute to this crime were gainfully employed and housed with their families. Obviously, it is unfair to ex-offenders, as well as simply naïve, to assert that changes in the laws pertaining to ex-offenders’ abilities to secure housing and employment will completely solve the problems of violence and crime which undercut sustainable communities and contribute to sprawl. But, given that certain laws make it more difficult for an ex-offender to find decent employment and housing, that these obstacles to employment and housing increase the chance that the ex-offender will commit another crime, and that crime and the fear of crime spurs people to leave the cities, contributing to sprawl (which has negative impacts on urban communities and the environment), it is by no means a stretch to suggest that the laws pertaining to ex-offenders hinder sustainable communities and degrade the environment.

C. **SUVs**

Sport utility vehicles have taken over America’s roads during the last decade, and are on their way to taking over the world’s roads. The four-wheel-drive vehicles offer a romantic vision of outdoor adventure to deskbound baby boomers. The larger models provide lots of room for families and their gear. Their size gives them an image of safety. 

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169 Stewart, *supra* note 163, at 1000.
171 NIVOLA, *supra* note 132, at 71.
Given these characteristics, it is no wonder, then, that there are now more than twenty million SUVs on the nation’s roads and that SUV sales now make up about seventeen percent of new vehicles sold each year (up from 6.7% in 1991) and about half the new noncommercial vehicles purchased each year. Unfortunately, SUVs “inflict far greater damage to our environment than cars”—a sentiment that is echoed by the very companies that make them. Although consumers often make purchases despite, and sometimes in spite, of the adverse effects of the purchase on the environment, the fact that both environmental organizations and industry have recognized SUVs’ negative environmental impact may leave one wondering why SUV sales continue to rise. When one considers that many of the desired traits that SUVs possess (such as all-wheel or four-wheel-drive and lots of carrying capacity) are present in more environmentally-friendly vehicles, their popularity seems even more bewildering. When one considers that just about everyone—from non-profit organizations and the National Academy of Sciences to automobile insurers and car manufacturers—has documented that SUVs are in fact less safe than cars, the fact that they are still on the market

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173 Car Talk claims the figure is much higher—about seventy million. Car Talk, Downside No. 6. SUVs cause more pollution than the average vehicle, at http://cartalk.cars.com/info/suv/downside6.html (last visited Sept. 10, 2003).

174 BRADSHER, supra note 172, at xvi.


176 Id.

177 Keith Bradsher, Ford is Conceding S. U. V Drawbacks, N.Y. TIMES, May 12, 2000, at A1. Bradsher states that in the Ford Motor Company’s first “corporate citizenship report,” the company admitted that SUVs “contributed more than cars to global warming, emitted more smog-causing pollution and endangered other motorists.” Id.


179 SUVs impose a number of hazards on the driver of the SUV, as well as dangers to the driver of the other vehicle in a collision. With respect to the former, for example, SUVs have a “high center of gravity, [and] are much more prone to tipping over than regular cars.” Car Talk, Downside No. 3: SUVs have a High Center of Gravity and are More Likely to Tip Over, at http://cartalk.cars.com/info/suv/downside3.html (last visited Sept. 10, 2003). As Gregg Easterbrook explains:

   SUVs roll over because their center of gravity is much higher than that of regular cars; and because their tires are often overloaded; and because truck-like steering properties make them harder to control than cars for average drivers who lack truck licenses; and because every time a pas-
senger climbs into an SUV, his or her own body weight, sitting tall off the road, raises the center of gravity that much higher. Gregg Easterbrook, *Axle of Evil. America's Twisted Love Affair with Sociopathic Cars*, *New Republic*, Jan. 20, 2003 at 33. The Sierra Club has reached the same conclusion:

SUVs give a false impression of safety. With their height and comparatively narrow tire-track widths, SUVs handle and maneuver much less effectively than cars. Emergency swerves to avoid a crash can themselves lead to rollover accidents in SUVs, which are four times more likely to roll over in an accident. Rollovers account for 62 percent of SUV deaths but only 22 percent in cars.

Sierra Club, *Driving Up the Heat: SUVs and Global Warming. Americans Deserve Vehicles that are Both Safe and Clean*, at http://www.sierraclub.org/globalwarming/suvreport/safety.asp (last visited Sept. 10, 2003) [hereinafter *SUVs and Global Warming*]; see also Easterbrook, supra, at 31 (noting that a study conducted by the National Research Council—an affiliate of the National Academy of Sciences—found that “in an accident, you and your family are more likely to die if you are riding in an SUV rather than in a car”); Danny Hakim, *Automakers to Redesign S.U.V. ’s to Reduce Risk to Car Occupants*, *N.Y. Times*, Dec. 4, 2003, at A1, C7 (reporting that “[s]port utility vehicles . . . despite their bulk, are . . . no safer for their own occupants because they are far more likely to roll over than passenger cars”) [hereinafter Hakim, *Reduce Risk*]; Danny Hakim, *S.U.V. ’s Take a Hit, as Traffic Deaths Rise*, *N.Y. Times*, Apr. 27, 2003, at WK4 (stating that “[r]ollovers of S.U.V. ’s . . . accounted for more than half of the 734-death increase from 2001 to 2002”); Danny Hakim, *Tests Track Accident Damage by Injuries by S.U.V. ’s*, *N.Y. Times*, Mar. 27, 2003, at C6 (citing studies conducted by the Insurance Institute for Highway Safety that “sport utility vehicles actually have slightly higher death rates for their own occupants than cars do because their high ground clearance makes them less stable and more likely to roll over”) [hereinafter Hakim, *Tests*]; Fara Warner, *Rollover Safety Moves to Center Stage*, *N.Y. Times*, Mar. 16, 2003, § 12, at 1 (reporting that “[t]o make their S.U.V. ’s and high-riding wagons safer and less prone to roll over, automakers have begun to add devices and systems that help to prevent rollovers—or that protect those inside the vehicle if it ends up on its roof”). For an in-depth analysis of the causes and consequences of rollovers in SUVs, as well as a discussion of which SUVs are most likely to rollover, see BRADSHER, supra note 172, at 149-65, who devotes an entire chapter of his book to the subject. Bradsher and Easterbrook also discuss what Bradsher has described as “the myth of four-wheel-drive safety.” *Id.* at 127-48; see also, Easterbrook, supra, at 32-33.

Besides the risk of rollover to the SUV driver, in an accident with a passenger car, SUVs are more likely to kill the driver of the other vehicle in the collision. BRADSHER, supra note 173, at 166-206 (discussing the “kill rates” of SUVs). This point is echoed by Easterbrook:

While SUVs . . . do not keep their occupants any safer, they cause significant and avoidable peril to others on the road. . . . In a front-to-front crash, the high noses of SUVs . . . tend to ride up over the sloping engine compartments of regular cars, resulting in the SUV sitting atop the car and crushing its occupants.

Easterbrook, supra, at 31; see also Keith Bradsher, *Light Trucks Prone to Tip, Safety Tests*
is downright astonishing. While it is impossible to probe the psyche of every SUV purchaser (and even if one could, the results would be less than conclusive), researchers have found that "[p]eople buy SUVs . . . because they are trying to look as menacing as possible to allay their fears of crime and other violence." In this light, the last sentence of the opening quotation to this Section is somewhat misleading. It is not that their size gives them an image of safety on the highway, in the event of a crash, but that their size gives them an image of safety from a dangerous and violent world.

This Section attempts to show another way in which the fear of crime leads to unsustainable practices that degrade the environment. This Section begins by describing how SUVs exacerbate the problems of air pollution, global warming, and the destruction of natural resources. From there, this Section discusses how the fear of crime has influenced SUV purchases.

1. "Axle of Evil"—The Environmental Impact of SUVs

SUV owners and drivers have recently come under fire for their "ecologically incorrect vehicles." The Detroit Project, a non-profit endeavor co-founded by columnist Arianna Huffington, has produced television commercials linking SUVs to support of terrorism. The Boston-based

Find, N.Y. TIMES, July 15, 1999, at A21 ("Because it is taller, heavier and more rigid, an S.U.V . . . is more than twice as likely as a car to kill the driver of the other vehicle in a collision."); Hakim, Tests, supra, (reporting that in a test conducted by the Insurance Institute for Highway Safety, drivers and/or front passengers in a vehicle struck in the side by an SUV are likely to suffer serious head injuries); Car Talk, Downside No. 4: SUVs Endanger Others, available at http://cartalk.cars.com/info/suv/downside4.html (last visited Mar. 30, 2003) (noting that "when an SUV hits a passenger car, the occupants of the passenger car are four times more likely to be killed"). In light of the danger SUVs pose to occupants of other vehicles in collisions, "15 automakers from four nations [recently] agreed to redesign their . . . SUVs . . . to reduce the likelihood that they would skip over the front bumpers of cars in collisions." Hakim, Reduce Risk, supra, at A1.

According to the Sierra Club, SUVs also pose more of a danger to pedestrians, bicyclists, and motorcyclists, "in part because existing braking standards for SUVs are weaker than for cars." SUVS and Global Warming, supra.

BRADSHER, supra note 172, at 96.

181 Easterbrook, supra note 179, at 27.


group of artists, Earth on Empty, plaster fake parking tickets on SUV windshields demanding that their owners and drivers consider the environmental impacts of driving SUVs. In the past year, the radical “eco-terrorist” group, Earth Liberation Front (“ELF”), has claimed responsibility for blowing up, setting ablaze, and otherwise vandalizing SUVs in California, Oregon, Pennsylvania, New Mexico, Texas, and Washington. There are countless other examples of public “anti-SUVism,” ranging from the benign to the extreme. Like other “anti” causes, such as anti-smoking, anti-fur, and anti-meat, the crusade against SUVs is not without substance. Because of their weight, engine size, and poor aerodynamics, SUVs get poor gas mileage. For example, in comparison to the Honda Civic HX, which gets 36 miles per gallon (mpg), the Hummer gets only 10 mpg. The more gas a vehicle

184 See Brown, supra note 183, at A15. Each ticket contains the following message: TO OFFENDER: Open your eyes, take a few deep breaths, and try to get honest with yourself. Did you get excited when you saw that ad of a SUV in the remote wilderness? Did you want to sue the manufacturer for FALSE advertising when you started driving it to the shopping center instead? Are you REALLY going to take that shiny new $40,000 SUV off road? We made this ticket because we live in the city, and so do you, and there’s something really wrong about the way the SUV is changing our streets and the air we breathe. . . . This is not a militarized zone! Earth on Empty, Over a Million Tickets Served in 500 Cities and 48 States, at http://www.earthonempty.com (last visited Sept. 11, 2003).

185 See Patricia Leigh Brown, Enabling, and Disabling, Ecoterrorists, N.Y. TIMES, Nov. 16, 2003, at sec. 4, 14; Brown, supra note 182, at A15 (mentioning damage caused by ELF in January 2003 to SUVs at a dealership in Erie, Pennsylvania); Nick Madigan, Cries of Activism and Terrorism in S.U.V. Torching, N.Y. TIMES, Aug. 31, 2003, at 14 (reporting that “elves” burned and destroyed twenty new Hummer H2s, worth about $50,000 each, in August 2003, in West Covina, California and that SUVs have also been damaged by “elves” in Seattle; Eugene, Oregon; and Santa Cruz, California); Press Release, Earth Liberation Front, ELF Torches SUVs in Erie, Pennsylvania (Jan. 2, 2003), at http://www.earthliberationfront.com/news/2003/010203.shtml (stating that ELF has claimed responsibility for the $90,000 worth of destruction and damage to SUVs at the dealership in Erie, Pennsylvania in early January 2003).

186 See Brown, supra note 183, at A15.

187 BRADSHER, supra note 172, at 244-45.


189 Easterbrook, supra note 179, at 34. The Ford Excursion does not fare much better, getting only 13 mpg. SUVs Emit More Air Pollution, supra note 188. The Jeep Grand Cherokee comes in next at 18 mpg, followed by the Ford Taurus with 23 mpg—well behind the Honda
consumes, the more it produces smog-forming pollution and global-warming gasses. Studies have shown that SUVs pollute the air forty-seven percent more than an average car and cause forty-three percent more global-warming.

In addition, because SUVs are “gas guzzlers,” oil companies are constantly searching for new areas in which to drill, many of which include “our nation’s most sensitive wilderness habitats.” Although Congress recently rejected efforts to open the Arctic National Wildlife Refuge (“ANWR”) to drilling, the Bush Administration still hopes to open that region. “Fragile coastlines in California and Florida, and lands surrounding Yellowstone National Park are also targets for drilling.”

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190 Vehicles emit volatile organic compounds (“VOCs”), nitrogen oxides (NOx), and carbon monoxide (CO). Benfield & Replogle, supra note 147, at 652. VOCs contribute to the creation of ozone and ground-level smog. DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW & POLICY 502 (2002). NOx is also a precursor to smog. Id. at 501. And when it is mixed with water, it causes acid rain. Id. “[CO] is the largest contributor to anthropogenic climate change and global warming.” Id. at 502.

191 Building a Greener SUV, supra note 175 (noting that SUVs contribute “1.8 million additional tons per year of smog-forming pollutants [and] 237 million additional tons per year of global-warming pollution”); SUVs Emit More Air Pollution, supra note 188; see also BRADSHER, supra note 172, at xvii (noting that “[a] midsize SUV puts out roughly 50 percent more carbon dioxide per mile than the typical car, while a full-size SUV may emit twice as much”); Ciezlewicz, supra note 145, at 28 (“The average car burns 550 gallons of gasoline per year and produces 8,800 pounds of carbon dioxide. . . . [SUVs] burn about twice as much gas and produce twice as much carbon dioxide.”); Easterbrook, supra note 179, at 34 (noting that the Hummer triples the annual greenhouse-gas emissions of a normal car).

192 Sierra Club, Driving Up the Heat: SUVs and Global Warming, SUVs Increase Our Oil Addiction, Threaten Our Wilderness and Coasts, at http://www.sierraclub.org/globalwarming/suvreport/energy.asp (last visited Sept. 11, 2003) [hereinafter SUVs Increase Our Oil Addiction]; see also Clements, supra note 144, at 109-12 (discussing the arguments of “pro-drilling forces” for drilling in ANWR).

193 SUVs Increase Our Oil Addiction, supra note 192.


196 SUVs Increase Our Oil Addiction, supra note 192.
2. "Armored Cars for the Battlefield"\textsuperscript{197}

Although environmentalists may feel that SUV drivers are waging a war against the environment, many SUV drivers perceive society as a combat zone. According to Shirley Collenette, a middle-aged mother and SUV driver, "[t]he world is becoming a harder and more violent place to live, so we wrap ourselves with these big vehicles."\textsuperscript{198} Her sentiments are echoed by Zoe Daffern, another middle-aged mother and SUV driver: "It [her black Chevy Suburban] gives you a barrier, makes you feel less threatened."\textsuperscript{199} While "[w]omen love S.U.V.'s because they feel safe inside a vehicle that looks menacing,"\textsuperscript{200} it is not just women who purchase SUVs for their battlefield image. According to the automobile industry's market researchers and executives, "Sport utility buyers [both men and women] tend to be more restless, more sybaritic, less social people who are 'self-oriented,' . . . and who have strong conscious or subconscious fears of crime."\textsuperscript{201} Dr. Clotaire Rapaille, a medical anthropologist whose studies of consumer focus groups helped shape the SUV, explains that "Americans [are] increasingly fearful of crime. . . . SUV buyers want to be able to take on street gangs with their vehicles and run them down . . ."\textsuperscript{202} As a result, "[s]ports utilities are designed to appeal to Americans' deepest fears of violence and crime"\textsuperscript{203}—a design that despite

\textsuperscript{197} BRADSHER, supra note 172, at 97 (quoting Dr. Clotaire Rapaille, a French-born medical anthropologist who has worked for Renault, Citroen, Chrysler, Ford and General Motors); Keith Bradsher, Was Freud a Minivan or SUV Kind of Guy?, N.Y. TIMES, July 17, 2000, at A1 (quoting BRADSHER, supra note 172).

\textsuperscript{198} Brown, supra note 183, at A15.

\textsuperscript{199} Id.

\textsuperscript{200} Tierney, supra note 182, at WK2 (quoting Dr. Clotaire Rapaille).

\textsuperscript{201} Bradsher, supra note 177, at A1; see also BRADSHER, supra note 172, at 101 (SUV buyers "tend to be people who are insecure and vain. They are frequently nervous about their marriages and uncomfortable about parenthood. They often lack confidence in their driving skills. Above all, they are apt to be self-centered and self-absorbed, with little interest in their neighbors or communities."); Easterbrook, supra note 179, at 35 (opining "that [SUVs] visually declare, 'I have serious psychological problems'").

\textsuperscript{202} BRADSHER, supra note 172, at 95, 97. See generally Simon, Crime, supra note 130, at 1415 (noting "the growing influence of the fear of crime over basic life decisions").

\textsuperscript{203} Bradsher, supra note 177, at A1; see also Easterbrook, supra note 179, at 27, 33 (stating that SUVs have "features designed to make the vehicles as aggressive and hostile as possible" and bemoaning the fact that "rather than trying to alter buyer proclivities, the manufacturers of SUVs have tried to encourage them"); Simon, Guns, supra note 167, at 140-41 ("SUVs are marketed . . . to invoke the challenges of urban/suburban life, including not only overcoming crime threats directly but also the tasks that are themselves derivative
its aesthetics, is actually less safe and, as discussed above, environmentally unfriendly.\footnote{204 See supra Part III.C.1.}

Given the connection between a fear of crime and SUV purchases and the fact that SUVs contribute significantly more to the problems of air pollution and global warming than other vehicles, the fifth and final argument about the collateral consequences of conviction and imprisonment for sustainable development and the environment can now be made: certain laws make finding decent employment and housing more difficult for an ex-offender. These obstacles increase the chances that the ex-offender will commit another crime. Crime, or perhaps, more precisely, the fear of crime, encourages people to buy SUVs.\footnote{205 See supra notes 199-203 and accompanying text.} SUV emissions have a negative effect on the environment.\footnote{206 See supra Part III.C.1.} The laws pertaining to ex-offenders therefore hinder sustainable development and degrade the environment.

This suggestion, however, is not without flaws. First, the fear of crime may have little to do with actual crime rates. According to Rapaille, Americans’ “fear [of crime] is irrational and completely ignores statistics showing that crime rates have declined considerably.”\footnote{207 BRADSHER, supra note 172, at 95.} Rapaille “attributes the pervasive fear of crime . . . to violent television shows, violent video games and lurid discussions and images on the Internet, which make young and middle-aged Americans more focused on threats to their physical safety than they need be.”\footnote{208 Id.} Simon also believes that the fear of crime may be media-influenced: “[c]rime journalism has definitely grown during the last two decades and may help to sustain the impression of an ever-growing problem with crime.”\footnote{209 See, e.g., The Humvee and Friends Fight Again, N.Y. TIMES, Mar. 30, 2003, at § 12, p.1 (showing a picture of a U.S. soldier near the Iraq-Kuwait border with a Humvee); see also Danny Hakim, In Their Hummers, Right Beside Uncle Sam, N.Y. TIMES, Apr. 5, 2003, at C1 (reporting that some Hummer owners feel pride when they turn on the television and see troops driving Humvees).} In addition, newspaper and television images of American troops driving Humvees—the military version of the Hummer—most likely fuel the perception that such “pharaonic contrap-
tions" are macho crime-stoppers. Thus, given the role of the media in shaping the public’s perception of crime, would reducing crime rates by reducing recidivism really affect the number of SUV purchases?

Another problem with trying to link recidivism to SUV sales is that many people purchase SUVs for reasons other than fear of crime. As mentioned above, despite the fact that “SUV occupants die slightly more often than car occupants in crashes,” many people purchase SUVs because they perceive them to be safe vehicles. Others may purchase SUVs to exude an “adventurous and free-spirited” image. According to Keith Bradsher, “[o]wning an SUV also provides reassurance for baby boomers that while they may have office jobs and mortgages now, they have not really changed that much from the days of their youth.” Thus, even the SUV purchasers who know that they are more likely to use their big vehicle for a trip to the grocery store or to retrieve a latte from Starbucks, rather than to ford a rough stream or to transport a kayak, are also unlikely to select a more sustainable automobile if confronted with news of lower recidivism rates. Despite the fact that lower rates of recidivism are probably less likely to lower SUV sales than they are to promote sustainable communities and discourage businesses from leaving urban areas, it is important to remember that other mechanisms for reducing the impact of SUV emissions on the environment have not been successful. For example, the National Highway Traffic Safety Administration recently announced a rule that would require manufacturers of “light trucks”—SUVs, vans, and pickup trucks—to reach a fleet average by 2007 of 22.2 miles per gallon. But this change “reflects no more than what automakers already [had] been planning to achieve” with their SUV fleets. Although Senators Dianne Feinstein (D-CA) and Olympia

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211 Easterbrook, supra note 179, at 27.
212 BRADSHER, supra note 172, at 427 (emphasis added).
213 Easterbrook, supra note 179, at 31 (quoting Senator Barbara Mikulski of Maryland during last year’s Senate debate on blocking SUV mileage standards: “women love their SUVs . . . because of their safety”).
214 Easterbrook, supra note 179, at 34.
215 BRADSHER, supra note 172, at 106.
216 See Across the Nation, SEATTLE TIMES, Apr. 2, 2003, at A13, LEXIS, Seattle Times File.
217 Id. According to Easterbrook, the rule would continue to allow SUV manufacturers to receive exemptions if they declare their SUVs “dual fuel . . . capable of running on ethanol.” Easterbrook, supra note 179, at 29. Almost no SUVs actually run on ethanol—indeed, most gas stations do not even sell it. Id. Thus, “the administration’s decision [to leave] the ‘dual fuel’ gimmick in place, mean[s] that many SUVs and pickups will simply evade the new
Snowe (R-ME) have introduced legislation that would close the gap between SUV and passenger car fuel economy—essentially, calling for SUVs to achieve 27.5 mpg by 2011—this legislation will not likely pass. Given the lack of political will to force SUVs to become more fuel-efficient, despite the fact that the technology is attainable, new approaches need to be considered and taken.

IV. PARTNERSHIP FOR A NEW AMERICA?: THE MARRIAGE OF ENVIRONMENTAL AND EX-OFFENDERS’ RIGHTS ORGANIZATIONS

"[R]eal environmentalism is fundamentally linked to issues of social justice, and . . . history will judge its advocates by whether they stand with the world’s poor, fighting for justice and freedom rather than merely protecting the comforts and aesthetic pleasures of affluent nature lovers."

In Managing the Environment, Managing Ourselves: A History of American Environmental Policy, Professor Richard N.L. Andrews writes:

standard." Id. Assuming that some manufacturers would actually go through with the increase to 22.2 mpg—an increase of 1.5 mpg over current requirements—the environmental effects would be negligible, “sav[ing] the nation a miniscule six million barrels of oil a year—less than three percent of what we are importing from Iraq.” Bush SUV Fuel Economy Proposal Would Save Less Than 3 Percent of Current Oil Imports from Iraq: Statement of Philip Clapp, NET, U.S. NEWSWIRE, Nov. 21, 2002, LEXIS, U.S. Newswire File (quoting Philip E. Clapp, President of the National Environmental Trust).

218 See S. 255, 108th Cong. § 2 (2003); see also Shame on Senate for Punting on Auto Emissions, NEWSDAY, Mar. 18, 2002, LEXIS, Newsday File, at http://www.newsdays.com. This increase in miles per gallon would save 1 million barrels a day. Id.

219 See Easterbrook, supra note 179, at 29 (pointing out that “Congress has repeatedly granted special waivers for SUVs . . . in 2002, a bill to improve SUV and pickup mileage drew only 38 votes in the Senate, ([with] many Democrats voting nay)).

220 Id. at 29.

221 Easterbrook jokes that with the “compromised safety inherent to the SUV . . . [w]e can soon expect a reduction in the sort of people who buy a[n] . . . SUV." Id. at 30. While some environmentalists certainly might like to see SUV drivers die violent deaths, waiting for those who pollute to die off is not the most expeditious way to address pollution control.

Environmental policy as a whole... includes all government actions that alter natural environmental conditions and processes, for whatever purpose and under whatever label...[T]he “real” environmental policy of a government is not necessarily what its officials say their policy is, nor what the statutes and regulations say, but the cumulative effect of what government actions actually do to the natural environment.223

This Article has attempted to illustrate this principle by showing a number of ways in which the collateral consequences of conviction and imprisonment extend beyond the individual and his family to his community, surrounding communities, and the environment. Recognizing that the laws governing ex-offenders may undermine sustainable communities and exacerbate existing environmental problems, however, is of little value unless the respective organizations representing these different issues begin communicating and working together. What does this entail exactly?

“American environmental policy has moved an extraordinary distance over its history, from laissez-faire exploitation of natural resources and ‘dilution as the solution’ for pollution to active public management and transformation of the environment and more recently to detailed national regulation of human impacts on it.”224 While these efforts should be lauded and continued, environmental organizations need to remember that much of the “environmental policy in the United States...[is] vulnerable to political instability...”225 As the current administration’s attitudes towards logging and road-building in national forests and to snowmobile use in the Yellowstone and Grand Teton National Parks illustrate,226 the progress made during one administration is often short-lived. Environmental organizations must devote more attention to influencing legislation that not only will have a lasting effect, but which will bring about a change in public consciousness and conduct. In other words, environmental organizations need to move beyond legislation and litigation that directly addresses pollution prevention

223 Andrews, supra note 2, at 4.
224 Id. at 371.
225 Id. at 358.
Environmental organizations can alter underlying behaviors, for example, by assisting ex-offenders’ rights organizations in removing or lowering some of the hurdles that ex-offenders face upon re-entry to society. On the national level, this might include pressuring Congress to eliminate the ban on TANF assistance and food stamps to individuals with drug felony convictions. On the statewide level, this might involve assisting ex-offenders’ rights organizations in crafting legislation to limit the use of arrest and conviction records in employment settings. On a local level, this could entail encouraging local housing authorities to adopt eviction policies that consider individual circumstances in determining whether to evict entire families for the criminal behavior of a single member.

Unfortunately, there are a number of difficulties with the proposed marriage between environmental and ex-offenders’ rights organizations. First, the laws governing ex-offenders range from the national to the local. With respect to employment, which is controlled at the state level, the states differ widely. In addition, some states may have very good policies with respect to employment, but poor policies regarding driving privileges, and vice versa. Thus, building broad-based support for this proposal may be difficult because the specific problems may differ from state to state. Gaining support for the proposal is further complicated by the fact that the environmental organizations which might have the time, energy, and staff to engage in such collaborative efforts are national organizations like the Natural Resources Defense Council (“NRDC”), and Environmental Defense, which tend not to get involved with state specific issues. Even if such national organizations could be convinced to incorporate ex-offender issues into their more main-

227 See supra Part II.B.1.
228 See supra notes 76-84 and accompanying text.
229 See supra notes 117-21 and accompanying text.
230 See supra notes 226-28 and accompanying text.
231 See supra Part II.A.
232 See, e.g., supra note 76 and accompanying text (discussing Wisconsin’s prohibiting discrimination in employment).
233 See supra note 28 and accompanying text.
stream environmental docket, they might feel that the timing is inappropriate and that all their efforts should be focused on combatting the current administration’s attack on existing environmental laws. State and local environmental organizations, on the other hand, which are more likely to bear witness to the problems facing communities because of recidivism, often focus on very specific issues, such as saving a certain river or wet-land, and may also be less inclined to broaden their focus. Thus, the first problem one would confront with such a proposal is figuring out who the players would be. In discussing how the fear of crime influences SUV sales, this Article admitted that link is not as strong as, for example, the effect of crime on sustainable communities. Thus, working to change the laws governing ex-offenders’ ability to secure employment, benefits, and housing might not be the most effective use of resources for an environmental organization devoted solely to the purpose of reducing SUV emissions. For environmental organizations with the broader goal of building sustainable communities—organizations which attempt to strike a balance between economic development, environmental protection, and social equity, rather than privileging environmental issues over the other two—the proposal may be more feasible and more in line with the organizations’ goals and long-term strategic plans.

Another potential hurdle lies in the fact that many view the efforts to change the laws governing ex-offenders as “soft on crime” and feel that ex-offenders should continue to pay a debt to society. Although many prosecutors agree that “the collateral consequences of a conviction are so severe that [they] are unable to deliver a proportionate penalty in the criminal justice system without disproportionate collateral consequences,” environmental organizations might fear that if they promote changes in the laws governing

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235 See Jehl, supra note 226.
237 See supra Part III.C.
238 See, e.g., Roger Clegg, Vice-President & General Counsel, Center for Equal Opportunity, Address at the 12th Annual Symposium on Contemporary Urban Challenges, Fordham Univ. Sch. of Law (Feb. 20, 2003) (stating with respect to disenfranchisement “[i]f you’re not going to follow the laws, you shouldn’t play a role in making them”).
239 Johnson, supra note 22, at 5. Johnson is careful to point out, however, that “[i]t is not so much the existence of the consequence, but the lack of the ability of prosecutors and judges to control the whole range of restrictions and punishment imposed on an offender that is the problem.” Id.
ex-offenders, they will lose the financial support of people who couple their environmental advocacy with a tough-on-crime approach.

Despite these obstacles, if environmental organizations and ex-offenders’ rights groups did find a way to unite, they might find that a joint effort would be met with greater political approval than if the ex-offenders’ rights group advocated alone. If two organizations representing these different constituencies made a joint proposal to limit the use of arrest and conviction records in employment settings, for example, and showed that the effects of such legislation would reduce crime and benefit the environment, politicians might jump at the chance to kill two birds with one stone—combat crime and protect the environment. Thus, the financial support that environmental organizations might fear losing could be offset by the political gains.

V. CONCLUSION

Throughout this Article, this author has suggested that the hurdles ex-offenders face with respect to employment, benefits and housing leads to recidivism which undermines sustainable communities and brings about environmental degradation. Because “environmental protection” is encompassed by the term “sustainable development,” which involves a balancing of environmental, economic, and social issues, the terms are not synonymous. As Professor Ruhl discusses in *Sustainable Development: A Five-Dimensional Algorithm for Environmental Law*, environmental organizations have often treated the economy as its enemy and equity as a sideshow. Indeed, many proposals to protect the environment—such as converting all coal-fired power plants to natural gas—would have devastating effects on some local economies, if implemented. By the same token, however, critics have attacked sustainable development as unattainable—“a ‘philosophy’ and not a cookbook set of recipes.” This Article has attempted to show that the collateral consequences of conviction have effects on all three components of sustainable development (although the focus has clearly been on the environmental prong). By suggesting that environmental groups collaborate with ex-offenders’ rights organizations, it has attempted to provide a recipe for the critics claiming that sustainable development lacks substance.

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241 *See* id. at 32-35.
242 *Id.* at 36.