



ALASKA JUSTICE FORUM

A PUBLICATION OF THE JUSTICE CENTER

Fall 2013/Winter 2014

UNIVERSITY of ALASKA ANCHORAGE

Vol. 30, No. 3-4

Collateral Consequences and Reentry in Alaska: An Update

Deborah Periman

“Our legal system has created barriers to work, education, business opportunities, volunteerism, and housing — the very things that are necessary to prevent recidivism.”

—Alaska Senator John Coghill (R-North Pole), “Alaska Tops List of Collateral Consequences of Conviction Project” (Press Release, March 28, 2013)

Introduction

Alaska ranks number one in the nation for state-created legislative and regulatory barriers to successful reentry for individuals with a criminal record, according to the national Legal Action Center (LAC). The LAC is a public interest law and policy organization focused on reducing impediments to employment and housing for those arrested or convicted of criminal conduct. Alaska’s dismal ranking is based on state statutes and regulations that create hurdles to successful reintegration in seven areas: employment, public assistance, third party access to criminal records, voting, public housing, eligibility for adoptive or foster parenting, and driver’s licenses. Of these seven, Alaska received the lowest score possible with respect to employment, public assistance, and parenting.

Many of these institutionally created barriers (often referred to as the collateral

consequences of a conviction) have no direct relationship to the crimes for which individuals have been convicted. Perhaps one of the clearest examples is administration of the federal Supplemental Nutrition Assistance Program (SNAP—more colloquially known as “food stamps”) in Alaska. Although convicted drug felons are subject to a blanket ban on receiving this benefit, Congress specifically authorized states to opt out of this prohibition and permit their residents access to benefits. All but eleven states have either opted out of the ban completely or moved to minimize its impact. Alaska is one of the few states that has not opted out, despite the fact that the federal government shoulders the entire cost of the food subsidies and pays half of the states’ costs to administer the program. As a result, Alaskans convicted of felony drug offenses return to their families and communities ineligible for this important nutritional assistance.

At the close of the 2013 legislative session, Alaska Senate Majority Leader John Coghill and Minority Leader Johnny Ellis moved to address the community safety and public health issues associated with collateral consequences. In a letter written to the

National Inventory of the Collateral Consequences of Conviction (NICCC) Project, the senators explicitly recognized that some of Alaska’s barrier statutes and regulations are not rationally related to the promotion of public safety. To the contrary, the senators observed in a March 26, 2013 letter to then-project director Margaret Love that these laws may have “the unintended result of impeding a former offender’s ability to find employment and housing” that will support and shelter their families. This has important policy implications for lawmakers because meaningful employment and family connections are two factors consistently shown to reduce the risk that those released will reoffend. Under the leadership of Senators Coghill and Dyson, a bipartisan legislative workgroup of four senators—Coghill, Dyson, Ellis, and French—is working to advance an Omnibus Crime bill intended to reduce rates of criminal recidivism in Alaska by removing some of these barriers to finding stable employment and safe housing.

This article provides a brief summary of recent efforts at the national level to ameliorate the public costs of unnecessary

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- An examination of prison visitation policies in Alaska and nationally (page 2).
- An update on the work of the Alaska Prisoner Reentry Task Force (page 5).
- In memoriam: Dr. Nancy E. Schafer (page 6).
- The relationship between barriers to employment and domestic violence (page 10).
- Recent faculty publications (page 11).

Alaska Resources on Reentry

A number of groups across the state are looking for reasonable solutions to the problem of collateral consequences in Alaska, solutions that will reduce the burgeoning costs of prison maintenance, facilitate the transition from incarceration to productive citizenship for those convicted of a criminal offense, and improve the quality of life for the families of those making the transition. These include:

Alaska Criminal Justice Working Group (<http://www.gov.state.ak.us/admin-orders/138.html>) (see “Criminal Justice Working Group Update,” *Alaska Justice Forum*, Summer 2013).

Alaska Native Justice Center Reentry Program (http://www.anjc.org/?page_id=869).
Alaska Prisoner Reentry Task Force and regional reentry coalitions in Anchorage, Fairbanks, Juneau, Mat-Su and Bristol Bay (<http://www.correct.state.ak.us/rehabilitation-reentry>) (see “Alaska Prisoner Reentry Task Force Update,” page 5).
New Life Development, Inc. (<http://www.nldinc.org/>).

Partners for Progress Reentry Center (<http://partnersforprogressak.org/focus-on-reentry/>).

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collateral consequences, summarizes the daunting array of statutory and regulatory impediments faced by released offenders in Alaska, and highlights the nascent reform movement in Alaska, focusing on the efforts of Senators Coghill and Dyson's work group to improve community safety and public health by facilitating prisoner reintegration and reducing rates of recidivism.

Collateral Consequences in the U.S.: 2013-2014

Although Alaska is identified as the state with the highest statutory and regulatory barriers to successful reentry for those convicted of criminal offenses, this is a national problem. The empirical and abundant evidence is clear: offenders who complete their sentences seldom, if ever, actually stop paying for their crimes. They — and their families — continue paying in multiple ways ranging from inadequate employment, to ineligibility for public food and housing benefits, to restrictions on the ability to adopt or receive placement of foster children. Their neighborhoods and communities pay as well, through a reduction in workforce, increased social service costs, and heightened demand on police and corrections officials.

The explosion in the number of Americans imprisoned has turned these collateral consequences into a national crisis for America's families and communities. Between 1991 and 1999, the number of children in the United States with a parent incarcerated in a state or federal facility increased over 100 percent, from approximately 900,000 to approximately two million children. Current figures for Alaska are difficult to determine but as of 2011, according to a survey conducted by the Sentencing Project, there were 1,520 Alaska parents in prison.

In August of 2013, U.S. Attorney General Eric Holder identified the problem of collateral consequences as a "top priority" for justice officials throughout the country. In remarks to the American Bar Association's House of Delegates, he called upon state and federal lawmakers to focus on improving reentry prospects for those with criminal convictions, emphasizing that this work has importance far beyond the offenders themselves, or even their families:

Ultimately, this is about much more than fairness for those who are released from prison. It's a matter of public safety and public good. It makes plain economic sense. It's about who we are as a people. And it

has the potential to positively impact the lives of every man, woman, and child — in every neighborhood and city — in the United States. After all, whenever a recidivist crime is committed, innocent people are victimized. Communities are less safe. Burdens on law enforcement are increased. And already-strained resources are depleted even further.

Barriers to successful reentry affect an enormous segment of the population. In recent years, the number of persons returning to their communities from state and federal prisons has reached approximately 650,000 annually. Approximately 12 million more are released each year from local jails, according to the U.S. Bureau of Justice Assistance (https://www.bja.gov/ProgramDetails.aspx?Program_ID=90).

A number of initiatives at the federal level target this problem. The most significant of these is perhaps the Federal Interagency Reentry Council. The Council was established in 2011 by the U.S. Attorney General's office for the purpose of coordinating efforts by various federal agencies to promote effective reentry policy and practice. Its focus is removing federal barriers that prevent individuals who have completed their sentences from transitioning into safe housing and productive employment. This coordinated effort rests on recognition that the twin issues of reentry and recidivism affect almost every aspect of federal government; they affect not only corrections and law enforcement agencies, but child welfare and public housing agencies, veterans' programs, Social Security benefits, emergency rooms and community health providers, substance abuse and addiction services, and education. Through the Reentry Council, a total of twenty federal agencies — ranging from the Department of Agriculture to the Department of Veterans Affairs — are working together to reduce recidivism and promote reintegration.

Across the country, state and local agencies are experimenting with innovative programs designed to improve public safety and reduce taxpayer costs associated with released individuals who reoffend. Many of these are assisted by grants from the U.S. Department of Justice pursuant to the Second Chance Act of 2007: Community Safety through Recidivism Prevention, PL 110-199. The Second Chance Act, as its title indicates, was enacted to "break the cycle of criminal recidivism, increase public safety, and help [s]tates, local units of government, and Indian Tribes, better address the growing population of criminal offenders who return to their communities and commit

new crimes." It authorizes grant funding, administered by the Bureau of Justice Assistance, for new or continuing programs that promote successful reintegration. Services provided by grantees in the years since the Act's implementation include substance abuse treatment, educational programs, employment assistance, anger and stress management counseling, family counseling, and life skills training.

Collateral Consequences in Alaska: 2013-2014

Here in Alaska, there are currently no fewer than 553 *state* statutes and regulations affecting in myriad ways the lives of those with past criminal convictions. These Alaskans are, of course, also subject to the vast array of federal statutes and regulations triggered by a criminal conviction. When these federal collateral consequences are added to Alaska's, the number of legislative and regulatory restrictions on the lives of these individuals swells to a staggering 1,597. And these figures do not include the panoply of laws at the local level that

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Alaska Justice Forum

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Typesetting and Layout: Melissa Green

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Published quarterly by the

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University of Alaska Anchorage
3211 Providence Drive
Anchorage, AK 99508
(907) 786-1810
(907) 786-7777 fax
uaa_justice@uaa.alaska.edu
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© 2014 Justice Center,
University of Alaska Anchorage
ISSN 0893-8903

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restrict access to municipal or borough employment or other benefits. Fairbanks North Star Borough Ordinance 2.12.160, for example, provides that a “person’s vote shall not count where the voter has been convicted” of a felony involving a moral turpitude unless his civil rights have been restored. Ordinance 11.56.050 of the City and Borough of Sitka makes individuals convicted of certain crimes ineligible for a license to operate a taxicab. In Anchorage, section 2.35.120 of the municipal code prohibits anyone with a felony conviction in any jurisdiction within the preceding ten years from acting as a lobbyist. There are a multitude of similar restrictions throughout Alaska’s municipalities and boroughs.

The state and federal figures above come from a recently completed survey of Alaska statutes and regulations by the American Bar Association’s (ABA’s) National Inventory of the Collateral Consequences of Conviction (NICCC) project. The NICCC is the result of a mandate from Congress to the National Institute of Justice (NIJ), included in the Court Security Act of 2007, to collect and study collateral consequences legislation

and regulation across the country. NIJ designated the ABA Criminal Justice Section to do the research. The results are posted on the ABA’s website at <http://www.abacollateralconsequences.org/>.

The inventory was spearheaded by U.S. Senator Patrick Leahy (D-VT), who understood that legislation unnecessarily restricting the ability of those with criminal convictions to find work or to fully participate in civic life is detrimental, rather than beneficial, to public safety. In his September 19, 2012 remarks lauding the launch of the database, he observed:

As a former prosecutor, I believe there should be serious consequences for criminal activity. I also know well that most of those convicted of crimes will return to our communities, and we should be doing everything we can to give them the skills and opportunities they need to reintegrate successfully, rather than returning to a life of crime. That is the right thing to do, and it makes us all safer.

The NICCC website is interactive, allowing users to search jurisdiction by jurisdiction using keywords, triggering offense, or

category of consequence. It was designed to serve as a resource for judges, defense counsel, and prosecutors to locate important information about the consequences of a conviction beyond the sentence imposed. And, importantly, it allows lawyers and their clients to understand the full impact a conviction might carry as they consider defense strategies and the long term consequences of a particular plea.

The project was initially launched in late 2012. Because of the critical importance of this information to policymakers and researchers as well as to judges, lawyers, and defendants, the database was put on line before most of the states, including Alaska, had been fully inventoried. In March 2013, Alaska Senators Coghill and Ellis wrote to the director of the NICCC, requesting that Alaska be placed at the top of the list for inventory completion. Specifically, they noted that having “an accurate understanding of the full extent of state collateral consequences” would assist the bipartisan legislative work group’s efforts to “advance an Omnibus Crime bill to reduce Alaska’s rate of criminal recidivism.” Their request was granted immediately, a decision praised by Alaska’s Attorney General Michael C. Geraghty. Geraghty, who also serves as

The Second Chance Act in Alaska

The Second Chance Act (SCA) of 2007 was enacted to address problems posed by the growing number of adults and juveniles released from incarceration and returned to their communities. In 2013, the U.S. Department of Justice (DOJ) reported there were over 2.2 million Americans serving time in prison and millions cycling through local jails annually. DOJ predicts that 95 percent of all offenders currently incarcerated will eventually be released and returned to their communities. SCA funds are awarded to help communities develop and implement strategies to facilitate reentry and reduce recidivism for these individuals.

In FY 2013, the Department of Justice Bureau of Justice Assistance (BJA) and the Office of Juvenile Justice and Delinquency Prevention awarded more than 100 grants totaling over \$62 million pursuant to the Second Chance Act. These awards were made to support reentry programs across the country and funded a diverse range of efforts. The focus of these projects included mental health/substance abuse, technology career training, juvenile reentry, and smart probation.

In Alaska, SCA funds have supported efforts by the Alaska Native Justice Center (ANJC), in collaboration with the Alaska Department of Corrections and the Alaska Prisoner Reentry Task Force, to reduce recidivism and promote successful reentry for both Alaska Natives and non-Natives. Improving reentry outcomes is a critical need across the state. A 2007 Alaska Judicial Council report found that of 2,000 offenders convicted of a felony in 1999, 66 percent were reincarcerated within three years for a new offense or a probation/parole violation.

In 2010, ANJC received \$175,000 in SCA funds under the BJA Adult and Juvenile Offender Reentry Demonstration

Projects. Eligibility for this award was limited to projects that sought “to reduce recidivism among their target population by 50 percent within a 5-year period” (<http://www.ojjdp.gov/grants/solicitations/FY2010/Secondchance mentoring.pdf>). The project was designed to build on ANJC’s existing adult prisoner reentry program by extending reentry services to one of the three community residential centers (CRCs) in the Anchorage area.

The most recent grant to ANJC, for \$100,000 in 2013, covers statewide recidivism reduction planning. It was one of 13 awards made nationwide by BJA to state correctional agencies or state administering agencies. These funds were awarded for the purpose of supporting a formal 12-month comprehensive planning process to develop a Statewide Recidivism Reduction Strategic Plan. Upon completion of the strategic plan, BJA will evaluate the grantees’ work and determine which agencies will be invited to submit applications for implementation grants of \$1 million to \$3 million.

The importance of this work and the continuing need to reduce recidivism across the country has prompted bipartisan legislation to reauthorize SCA grant programs. The proposed Second Chance Reauthorization Act of 2013 (S1690/H.R. 3465 — 113th Congress) would promote greater accountability from grantees while expanding the number of grant programs available. The bill places a priority on data collection, outcome evaluation, and evidence-based practices. In urging Congress to act, sponsors of the bill note that more than 650,000 individuals return from prison each year: “how we integrate them into the broader community when they are released...profoundly affect[s] the communities in which we live.”

co-chair of the Criminal Justice Working Group, a multi-agency group formed to address issues such as criminal recidivism, emphasized in a letter dated March 26, 2013 that “unnecessary and/or gratuitous barriers to employment once a prisoner leaves incarceration can easily foster a return to crime....”

The NICCC’s inventory of Alaska statutes and regulations was complete by mid-June, and in July 2013, Alaska’s House and Senate Judiciary Standing Committees held a joint hearing on the Omnibus Crime bill, Senate Bill 64, referenced in Senators Ellis and Coghill’s letter to the NICCC. As proposed, the bill will modify existing statutes and adopt new statutes all with the dual aims of improving public safety and reducing spending on corrections. Reducing recidivism is integral to the bill’s purpose. Citing a 2011 report by the Alaska Judicial Council, Senator Ellis noted that Alaska has one of the highest levels of prison population growth in the nation and “an alarming recidivism rate.” He referred to studies reporting that one out of every 36 Alaskans were incarcerated, and that two-thirds of those released were back in custody within three years. (See minutes, <http://bit.ly/akleg-sb64>.)

In Alaska, the burden of barriers to em-

ployment and other collateral consequences of criminal convictions fall disproportionately on the Native community. Although Alaska Natives/American Indians comprised just 17 percent of the overall 2012 population of Alaska by Alaska Department of Labor estimates, they comprised slightly more than 37 percent of those incarcerated according to the Alaska Department of Corrections 2012 *Offender Profile*. Nearly 33 percent of youth in the juvenile justice system in 2012 were Alaska Native/American Indian, according to the Alaska Division of Juvenile Justice.

For lawmakers considering the impact of barrier statutes on community safety, the employment difficulties faced by those released from incarceration have important ramifications beyond the risk of recidivism. Unemployment or underemployment is also one of the key predictors of domestic violence, a problem that is arguably the most significant public health and law enforcement challenge in the state. Joblessness is associated with increased psychological and physical aggression. (See “Employment Barriers and Domestic Violence,” page 10.) Research has shown that family economic stress also gives rise to a host of physical and mental problems including anxiety and sleep disorders, digestive ailments, and headaches. Rates of alcoholism and drug abuse also rise. This in turn translates into increased hospital admissions and demand on public health services.

The number of Alaska families facing the challenge of reintegration make barrier legislation a significant public health and safety issue across the state. In 2012, the Alaska Department of Corrections (DOC) reported 4,095 felon releases (Table 1). The total number of offender releases that year was 11,917. There was an average of 1,144 releases—including felons and misdemeanants—each month. (These figures do not include releases from contract jails, community residential centers, or electronic monitoring.) Table 2 shows the total figures for offenders under DOC jurisdiction in 2012.

Table 1. Unique Releases of Offenders from Alaska Department of Corrections Facilities by Offense Type, 2012

Unduplicated counts.

Offense type	N
Felony	4,095
Misdemeanor	7,766
Violation	56
Total	11,917
Average number of unduplicated offenders released per month	1,144

Note: Monthly releases are based on all convictions. If an offender was released more than one time in a given month, then only one release was counted for that month. If an offender was released more than once but in different months, then one release per month was counted.

Source of data: Alaska Department of Corrections

The Reform Movement

Testimony taken by the Joint Judiciary Committees on Senate Bill 64 in Wasilla in July 2013 was unanimous in recognizing that policing, prosecution, and incarceration alone will not make Alaska’s communities safer places to live. (A Joint Judiciary Committee meeting on SB64 was also held in Fairbanks in October.) Lawmakers must turn their attention to prevention and strategies to reduce recidivism among the thousands of prisoners released each year, including removing unnecessary barriers to employment and public benefits for Alaskans with past convictions for criminal offenses.

Former Alaska Supreme Court Justice Walter Carpeneti in his testimony noted that the Conference of Commissioners on Uniform State Laws recently adopted a proposed uniform law addressing the problem of institutionalized barriers to reintegration. This proposed legislation, the Uniform Collateral Consequences of Conviction Act, includes a variety of measures designed to mitigate the counter-productive effects of unnecessary barrier laws. They include provisions such as expungement for relief from the consequences of overturned or pardoned convictions and procedural mechanisms by which jurisdictions may improve the employability of those who were convicted but have served their sentence. In 2013, five states—Connecticut, Minnesota, New Mexico, New York, and Vermont—considered bills to adopt one or more of these measures.

Texas Representative Jerry Madden, former chair of the Texas House of Representatives Corrections Committee, attended the Wasilla joint meeting. He described

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Table 2. Offenders in Institutions under the Jurisdiction of the Alaska Department of Corrections, 2012

Includes both sentenced and unsentenced prisoners in both jails and prisons.

In-state	3,800
Anchorage Correctional Complex East	428
Anchorage Correctional Complex West	418
Anvil Mountain Correctional Center (Nome)	115
Fairbanks Correctional Center	277
Goose Creek Correctional Center (Wasilla)	429
Hiland Mountain Correctional Center (Eagle River)	400
Ketchikan Correctional Center	68
Lemon Creek Correctional Center (Juneau)	221
Mat-Su Pretrial (Palmer)	86
Palmer Medium Correctional Center	288
Palmer Minimum Correctional Center	176
Point Mackenzie Correctional Farm (Wasilla)	16
Spring Creek Correctional Center (Seward)	305
Wildwood Correctional Center (Kenai)	285
Wildwood Pretrial (Kenai)	115
Yukon-Kuskokwim Correctional Center (Bethel)	173
Out-of-state	1,051
Colorado State Prison	6
Hudson Correctional Facility (Colorado)*	1,035
Washington State Prison	1
Federal Bureau of Prisons	9
Total	4,851

* Hudson Correctional Facility is a private correctional facility operated by Cornell Companies, Inc.

Source of data: 2012 *Offender Profile*, Alaska Department of Corrections

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various Smart Justice initiatives across the country and highlighted the progress Texas has made in reducing recidivism and lowering numbers of prisoners. In brief, *Smart Justice* or *Justice Reinvestment* refers to diverting public funds away from prison growth and maintenance and using them on programs designed to reduce the numbers entering prison for the first time and break the cycle of recidivism for those already incarcerated. Following implementation of these programs in Texas, in the two years between 2011 and 2013 the state housed 7,000 fewer prisoners, parole revocations dropped 40 percent, juvenile probations dropped 30 percent, and the arrest rate declined 10 percent. The state closed one prison during that period and has approved closing two more. These results stand in stark contrast to the 2007 prediction by the Texas Legislative Budget Board that within five years there would be 17,700 new prisoners in the state and that eight or nine new prisons would be required, at a public cost of \$250 million plus annual operating costs of \$40–50 million per prison.

Representative Madden recommended that Alaska legislators look at legislation recently passed in other states — among them, Ohio. Ohio has emerged as a national leader in its efforts to promote the successful reintegration of released individuals. In 2012, the Ohio legislature passed Senate Bill 337 which created a certificate for qualification for employment. The certificate does

two things — it relieves eligible individuals from automatic disqualification from some state-issued occupational licenses and it provides immunity for employers from negligent hiring liability related to hires of individuals holding a certificate. The 2012 reforms also included a mechanism by which eligible individuals with no more than one felony conviction, two different misdemeanor convictions, or one felony and one misdemeanor conviction may have their records sealed.

These and similar measures are slowly being adopted across the country as state leaders acknowledge that conviction-based constraints on employment and participation in other aspects of civic life make communities less safe and increase the public cost of policing and corrections. Such measures include “ban the box” legislation preventing employers from asking about an applicant’s criminal past at the initial stages of hiring or licensing, protection for employers from negligent hire suits based on employment of those with criminal convictions, provisions for the expungement and sealing of certain criminal records, statutes that would make state residents with criminal convictions eligible for federal food and housing benefits from which they might otherwise be barred, and repeal of laws preventing individuals with criminal convictions from voting. Senators Ellis and Coghill’s work to advance the cataloging of collateral consequences in Alaska and examine the impact of these laws on families and local communities falls squarely within this bipartisan reform movement.

Conclusion

As Senator Coghill noted in a March 28, 2013 press release, “The whole point of rehabilitation is to keep people from going back down that road of crime. If we take away every opportunity they have to rebuild their lives after serving their time, we are basically paving their way back to prison.” And as Attorney General Holder observed, this is about far more than fairness to those released. Fundamentally, it is about the public good. The bipartisan working group’s initiative to reduce state-created obstacles to successful employment and full enjoyment of civic life for those with criminal convictions in their past has the potential to improve community safety and public health, reduce state expenses associated with recidivism, make available an underutilized human resource to Alaska’s businesses, and vastly improve the quality of life for the children of those convicted.

This work is not easy. It is, in fact, immensely difficult. It requires thoughtful, time-consuming analysis of hundreds of individual statutory and regulatory provisions and a careful, objective balancing of public interests. It is, nevertheless, work that is overdue and work that is a critical component of community health and safety.

Deb Periman, J.D., is a member of the Justice Center faculty. Simona Gerdtz and Nessabeth Rooks contributed valuable research on this topic. For further reading on the collateral consequences of criminal conviction, see http://justice.uaa.alaska.edu/a-z/c/collateral_consequences.html.

Employment Barriers and Domestic Violence

Deborah Periman

In 2003 the *American Journal of Public Health* published the results of an 11-city study looking at risk factors for femicide. In the article, “Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study,” investigators looked at differences in demographic, background, and relationship variables between a group of femicide victims and a control group of abused women. Of the variables examined,

the strongest risk factor for intimate partner femicide was the perpetrator’s lack of employment.

The researchers also found that “[i]n fact, abuser’s [sic] lack of employment was the only demographic risk factor that significantly predicted femicide risks” after con-

trolling for other factors. Unemployment increased the risk of femicide four times over the risk associated with employed abusers. Moreover, unemployment appeared to underlie increased risks generally attributed to race and ethnicity.

The link between perpetrator unemployment and domestic violence is so significant that experts conclude any effective domestic violence prevention strategy must address unemployment and male poverty. Professor Deborah Weissman of the University

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