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POLICY BRIEF

IN SUPPORT OF FAMILY STABILITY

Families Who Rely on Cash Assistance and the Burdens Imposed on Them When Incarceration is Excluded From the Definition of “Temporary Absence”

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By Matthew Main



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The Community Service Society of New York (CSS) is an informed, independent, and unwavering voice for positive action that serves the needs of our constituents: the 2 in 5 New Yorkers who live on poverty’s front line. CSS draws on a 160-year history of excellence in using research, advocacy, litigation, and innovative program models to shape actionable policy solutions that strengthen and benefit all New Yorkers.

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This project reflects the thoughtful input of many contributors. At the Community Service Society, Leslie Boutin, Diane Wenzler, Barbara Zerzan, Paul Keefe, and Michelle Light all provided invaluable insight and guidance on the formulation of this policy brief. McGregor Smyth of Bronx Defenders and Susan Antos of Empire Justice Center have both offered extensive commentary and have also made significant contributions.

Foreword

The Community Service Society (CSS) has a long history of identifying and advocating solutions to some of the most intractable and complex issues affecting poor individuals and families. In recent years these efforts have also focused on the issues of mass incarceration and reentry. CSS has embarked on a comprehensive, multi-disciplinary approach to addressing the problems faced by the formerly incarcerated as they seek to reenter our communities and adapt to the economic pressures inherent in today's global economy:

- Our lawsuits directly challenge the barriers to political participation and employment for this population.
- Our advocacy in both the community education and legislative arenas is shaped by our organizing efforts that convene every major service provider in the reentry field at CSS regularly through our New York Reentry Roundtable.
- Our mentoring and support programs draw on the experience of senior volunteers to assist the formerly incarcerated in their job search by inspecting their own criminal histories through our Record Repair Project and to also assist the children of persons in prison.
- Our direct service initiatives provide case management counseling to the families of the incarcerated.
- Our overarching focus on employment as the primary vehicle to exit poverty recognizes that segments of our poverty population—including disconnected youth and the formerly incarcerated—present significant and recurring challenges to the ability of the private and government sectors to invest wisely in workforce development. To this end we have secured additional government funding for transitional jobs for the formerly incarcerated.

In effect, an organization like CSS with its long history of fighting poverty is impelled to confront the continuing damage wrought by a dysfunctional criminal justice and law enforcement paradigm. Two dominant themes guide our work and emanate from the reality that the United States has chosen imprisonment and punishment as tools of social control and that New York State, in particular, has followed this

lead. Given the historically high and racially disparate levels of those imprisoned or otherwise under a form of criminal justice supervision, CSS recognizes that a) it is impossible to address poverty in New York City without addressing the consequences of mass imprisonment; and b) that race, and the racially discriminatory effects of the criminal justice system on African Americans and Latinos, permeates the system and produces skewed results that harm our communities today. The spatial concentration of the effects of mass imprisonment, and the sheer numbers of persons affected, directly contribute to the economic depression that harms poor communities in New York City. Indeed, we can now seriously question that the concentrated experience of incarceration and reentry in poor New York City neighborhoods of color is more a contributing factor of social distress than an effective public safety policy.

In this regard this policy brief on the negative effects of a “temporary absence” policy in public assistance highlights another intersection between the effects of mass imprisonment and public benefits to the poor. The current policy on “temporary absence” significantly burdens poor families by excluding incarceration from the list of conditions that define temporary absence and reduces their Cash Assistance grant accordingly. This brief was the culmination of a number of repeated engagements with city officials to address this anomaly led by members of the CSS Center for Benefits and Services and the CSS Department of Legal Counsel. That effort also benefitted from the invaluable assistance of other organizations in the city that work collaboratively with CSS on numerous areas of prison reentry and who are acknowledged herein. Notwithstanding those contributions, the policy brief would not have materialized without the singularly critical efforts of our 2009 Haywood Burns Legal Intern, Matthew Main. Our Haywood Burns Legal Internship is now ten years old and it continues to honor the legacy of an incredibly talented attorney and scholar. Mr. Main's contributions will assuredly help CSS, and others, tackle this public policy issue head on, while continuing our collective efforts to promote Haywood's work of assisting marginalized people everywhere.

Juan Cartagena
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I. Introduction

In New York City and around the state, especially during such challenging economic times, it is understandable that many families must rely on public benefits such as Cash Assistance (CA), Medical Assistance,¹ and Food Stamps in order to meet their basic survival needs. As of June 2009, there were more than 152,000 families (346,106 individuals) receiving Cash Assistance—funds to help pay rent, fuel, and utility expenses—from the Human Resources Administration (HRA), New York City’s department of social services.² According to the HRA Web site, one of the primary goals of the programs that provide these CA funds is to promote economic stability for families so that they can work “to achieve the maximum level of self-sufficiency.”³

Families receiving CA, by definition, already struggle to meet their daily needs of food and shelter as they walk the difficult path to self-sufficiency. When a member of the household is incarcerated, even for a brief period, the effect can be destabilizing for the entire family, putting them at significant risk of job-loss and eviction. In fact, during the month when incarceration of a household member occurs, families are two times more likely to move to another residence or shelter.⁴ For these families, it is critical that certain forms of CA remain available to stabilize them during this crisis, particularly to “retain housing and maintain the home.”⁵

In order to further advance this objective of stability, the New York State Office of Temporary and Disability Assistance (OTDA) has promulgated regulations that promote the uninterrupted provision of Cash Assistance by not penalizing recipients for “temporary absences” during the period in which they are receiving benefits.⁶ This “temporary absence” policy permits families to continue receiving Cash Assistance to pay rent and utilities when a household member is found to be temporarily absent “due to illness or other good cause”⁷ as long as he or she “[d]oes not leave the United States; and [e]stablishes the intent to return to the household; and [c]omplies with all Agency requirements.”⁸

A recent HRA policy directive, however, significantly and improperly limits the broad temporary absence definition in the state regulation by excluding incarceration from the defi-

nition of “temporary absence.”⁹ As a result, families must confront the reality of a reduction or revocation of benefits when a household member is detained or imprisoned, even if for a brief period of time. The exclusion of incarceration under this policy directive remains the practice at HRA despite clear statutory and regulatory language as well as pertinent case law that consistently recognizes incarceration as “good cause” to justify absences. This policy also fails to consider the reality that most periods of incarceration are very brief, as demonstrated by data showing that the median stay of all inmates at New York City’s jail at Rikers Island in 2008 was just 7.74 days.¹⁰ Benefit reductions due to this restricted interpretation directly contradict the purpose of public benefits programs to achieve the “maximum level of self-sufficiency”¹¹ and leave families vulnerable to abrupt situations of crisis and insecurity. Therefore, consistent with the underlying objectives of stability and family cohesiveness, the definition of “temporary absence” should be interpreted to include reasonably brief periods of incarceration as contemplated by the state regulation.

The purpose of this policy brief is to offer an overview of HRA’s Cash Assistance program and the devastating practical effect that HRA’s narrow definition of “temporary absence” has on families. First, the connection between Cash Assistance and the temporary absence policy will be outlined and explained. The brief will then reveal the critical importance that the Cash Assistance program has on the ability of families to maintain financial stability and security. The evaluation of the policy will continue with a discussion of the social and economic consequences of failing to promote stability by excluding incarceration from the definition of “temporary absence.” To contextualize this discussion, an analysis of relevant data will then illustrate the flaws of HRA’s current temporary absence policy, laying a foundation and justification for the need to remedy the situation. Finally, such a remedy will be offered by demonstrating that incarceration must be included in the definition of “temporary absence” to ensure that HRA’s stated goal “to achieve the maximum level of self-sufficiency”¹² is truly being realized.

II. Cash Assistance and Temporary Absence: What They Are and How They Work

The total amount of Cash Assistance that is distributed to eligible persons in need is based on the aggregate of three sub-categories: Basic CA Allowance,¹³ Home Energy Allowance,¹⁴ and Maximum Shelter Allowance.¹⁵ Grant amounts are calculated and disbursed to recipients according to the number of persons in the household. In order to promote family stability and cohesiveness, HRA and OTDA allow for Cash Assistance benefits to continue to be received even if a recipient is temporarily absent “due to illness or other good cause.”¹⁶ The policy creates a standard of flexibility in the continued provision of Cash Assistance when a household member is unable to attend the required meetings, work assignments, or recertification appointments due to his or her temporary absence. Without a temporary absence policy, when a household member fails to comply with a given program mandate, the entire household could be sanctioned, have its case closed, or his or her absence could be construed as a “change in household composition,”¹⁷ which permits HRA to rebudget the amount of funds that the entire *household* is entitled to.

This means that an inability to comply with program mandates due to absence normally results in the household’s monthly allowance being reduced to account for one less person in the home. For families living under the constraints of very tight budgets, such a reduction in these funds can result in the family’s failure to make food, rent, fuel, or utility payments. Unfortunately, due to their indigence alone, families in these situations may face far more drastic consequences like eviction, homelessness, or further disruption of the family unit if circumstances require that the children be placed in foster care. When a household member’s absence is not recognized within the interpretation of “temporary absence,” the burden caused by the reduction of CA benefits must inevitably be borne by the family.

In New York, both state regulations and the Temporary Assistance Source Book indicate that in order for an individual to be included in the budget, he or she must be residing in the dwelling unit.¹⁸ However, the regulations provide that a Cash Assistance household may also include “persons who are temporarily absent from such households, such as children or minors attending school away from home whose full needs are not otherwise

met.”¹⁹ Specifically, the New York State regulations clearly establish that a person shall be considered “temporarily absent” and, thus, remain entitled to his or her benefits, as long as he or she “[d]oes not leave the United States; and [e]stablishes the intent to return to the household; and [c]omplies with all Agency requirements.”²⁰ Under this temporary absence standard, the grant of Cash Assistance may be continued as long as the participant is “reasonably expected” to return to the home and the above-mentioned conditions are met.²¹ If an absence extends beyond six months, however, the absent person is required to submit affirmative evidence of his or her continuing intention to return to the home and that he or she is prevented from returning because of “illness or other good cause.”²² The absent recipient must also continue to be financially eligible for the grant in the same or different amount and have continuing contact with the Agency (or another social services agency located outside the state).²³

The city’s policy on temporary absence fails to consider the reality that most periods of incarceration are very brief, as demonstrated by data showing that the median stay of all inmates at New York City’s jail at Rikers Island in 2008 was just 7.74 days.

Even under certain exceptional circumstances, the temporary absence of the recipient may still allow for the continuance of Shelter and Home Energy Allowances to help pay rent and utility bills. Examples of such special circumstances include situations where the temporary absence is due to residential treatment for substance abuse; where a child is removed from the Cash Assistance grant and placed in foster care with a plan for the child to eventually return to the home; or where an individual is in a medical facility and reasonably expected to return to the household.²⁴ Under any of these circumstances, allowance for household expenses can be made for up to 180 days if “essential to retain housing and maintain the home.”²⁵

As a means of oversight, such payments are controlled and cannot continue for more than 45 days unless a caseworker has reviewed the recipient's status and it is expected that he or she will not remain absent for more than 180 days.²⁶ Based on these guidelines, statutory language, and some of the above-mentioned illustrative situations, there is no indication that the objectives of Cash Assistance would be furthered by excluding incarceration from the definition of "temporary absence" under the appropriate circumstances.

In response to the New York State regulation governing the allocation of Cash Assistance,²⁷ HRA issued Policy Directive #02-35-ELI (PD #02-35-ELI), dated August 30, 2002, to clarify the meaning of "temporarily absent" and make it clear that the definition includes circumstances where a Cash Assistance recipient is absent "due to illness or *other reasons*" [italics added].²⁸ This interpretation of the controlling state regulations changed significantly, however, on April 16, 2008, when HRA Policy Directive #08-16-ELI (PD #08-16-ELI) revised PD #02-35-ELI. The language in this new directive was altered to state that "[a]n individual currently in receipt of Cash Assistance (CA) who is temporarily absent from the household due to illness or other *good cause* and intends to return to the household, is entitled to a continued CA grant" [italics added].²⁹ This revised directive narrowed the scope of the definition of "temporary absence" by modifying its language from "illness or other reasons" to "illness or other good cause." Most significant, and in contravention to the broad state definition, the directive mandated that anyone who is absent for more than two weeks due to incarceration be deemed ineligible for Cash Assistance.³⁰

Despite the undisputed temporary nature of most periods of incarceration,³¹ the continued intent of these temporarily incarcerated individuals to return to the household, and the fact that most temporarily incarcerated individuals have yet to be convicted of any crime,³² HRA has improperly interpreted "temporary absence" to exclude incarceration.³³ Since many of a person's needs (e.g., temporary shelter and three meals daily) are met while in prison or jail, HRA (and at times OTDA) contend that there is no apparent basis for the incarcerated individual to be considered temporarily absent and therefore allowed to remain on Cash Assistance.³⁴ This rationale, however, ignores the demonstrated impact on families that results from

excluding incarcerated individuals from the temporary absence policy and the full needs of the person upon his or her imminent and intended return home. This exclusion can result in a loss of crucial financial assistance that is relied on by the families of incarcerated individuals. Due to the precarious nature of the financial situations experienced by many Cash Assistance families and the important need for stability to promote self-sustainability, incarceration should be evaluated by HRA no differently than any other temporary absence situation.

If, as required by the state regulation, the circumstances surrounding incarceration were evaluated in a manner similar to other temporary absence situations, no changes to current HRA processes for determining the continued disbursement of CA funds would be required. HRA would continue to supervise disbursement while ensuring that the Cash Assistance and "temporary absence" eligibility criteria continue to be met. It is true that the temporarily absent recipient may have to be excused from appointments and work assignments during this interim period, but such exceptions fall squarely within established "good cause" definitions and are made routinely by HRA to account for other circumstances faced by recipients. The data indicates that more than 50 percent of CA recipients are already receiving temporary waivers of their work assignments.³⁵ With this in mind, a policy that extends a similar waiver to individuals for brief periods of incarceration is consistent and logical. Families rely on the stability promoted by such waivers and the interest of those families must outweigh any concern generated by an already routine practice that temporarily excuses work assignments for those who are temporarily unable to comply.

By restoring the definition of temporary absence to include incarceration, families would be able to retain the funds necessary for mandatory monthly household expenses, such as rent, that would otherwise be reduced when the household's Cash Assistance entitlement is rebudgeted to include one less person. Likewise, standards for the continuance of benefits despite a temporary absence have remained flexible when the recipient is able to show "good cause"³⁶ or when it is "essential to retain housing and maintain the home."³⁷

According to HRA's current interpretation of the regulations governing Cash Assistance, incarcerated individuals are not entitled to any benefits under the definition of "temporary absence."³⁸ This means that when a family member is tempo-

rarily incarcerated, not only are Food Stamps reduced, but Cash Assistance—necessary for rent and utilities—is as well. Though the city and the state have informally suggested that individuals may be incarcerated for up to 30 days without affecting the continuance of their benefits,³⁹ there remains a requirement that families immediately notify HRA upon any “change in household composition,”⁴⁰ which, under the current interpretation, would include a temporarily incarcerated person. Such a requirement is particularly problematic because, for many families, a situation where a member of the household is temporarily incarcerated is not interpreted as a “change” in household composition, but rather as a family crisis.

Recipients do have a right to a fair hearing⁴¹ where they can “challenge [the correctness of] certain determinations or actions”⁴² of HRA and where it is the burden of HRA to establish that any discontinuance or reduction was correct.⁴³ However, failure to make such a challenge can result in an abrupt reduction in benefits because once HRA has been informed that a member of the household has been incarcerated, it need only provide “timely notice” of the proposed reduction of benefits.⁴⁴ The “timely notice” standard requires that HRA inform families of their proposed action a mere 10 days prior to the effective date of any reduction or discontinuance of benefits.⁴⁵ This means that families need only be advised 10 days prior to the date on which the funds they rely on to meet rent, fuel, and utility payment obligations will be reduced. Furthermore, where a fair hearing is not requested within 10 days of the notice date, recipients must reapply and wait a 45-day period before they are able to be reenrolled in Cash Assistance.⁴⁶ For families with such fragile budgets, these kinds of abrupt changes that carry such far-reaching consequences can be detrimental to the continued maintenance of family stability. In light of the stated HRA and OTDA objective of family stability and maximized self-sustainability, it follows that HRA’s policy—which effectively contradicts those very goals—must be reevaluated in the interest of the families it was designed to protect.

III. New York’s Temporary Absence Policy: Why It Matters and Who It Affects

The population of incarcerated individuals and their families is of particular concern in the context of the temporary absence policy for Cash Assistance. The gap in services that is created by the exclusion of temporary incarceration warrants special consideration due to the effect that a revocation of benefits has on dependent family members. For example, HRA reduces CA benefits if a household member is incarcerated because HRA deems that individual ineligible and not subject to the temporary absence regulation.⁴⁷ Thus, when a member of a household of three is incarcerated, albeit temporarily, HRA improperly determines that household to be a household of two and grants Cash Assistance—Basic CA Allowance,⁴⁸ Home Energy Allowance,⁴⁹ and Maximum Shelter Allowance⁵⁰—as well as any Food Stamps, for a two-person household instead of three. A reduction in the Basic CA Allowance or in the provision of Food Stamps is logical because if one less household member is present, there is one less person to feed and a corresponding reduction in basic monthly expenses. However, the same cannot be said to be true for the Home Energy and Shelter Allowance portions of Cash Assistance, resources that are relied on collectively by the entire *family*. The rent and utility payments that a family owes, for instance, do not change simply because there is one less person under the roof.

When a family member is temporarily incarcerated and the Cash Assistance that the *family* receives is reduced, that family suffers. The amount of money that a family loses in the Shelter Allowance component of the Cash Assistance allocation under such circumstances ranges from \$22 to \$117 per month, depending on the size of the family.⁵¹ For the Home Energy component, the loss to the family ranges from \$12.50 to \$15 per month. These amounts are small in terms of the city’s budget but crucially important to the maintenance of family stability. Though the individual who has been incarcerated may have most of his or her needs met by the correctional facility, the families left behind cannot rely on that same security. The very same continuing needs assessment (including the need to maintain a home) for other temporarily absent persons applies to people incarcerated with an intent to return to their homes. Neither rent nor utilities reduce themselves proportionately when one tenant is temporarily absent due to incarceration. Therefore, though the family’s food

and personal expense budget would understandably decrease with one less person to include, the cost of rent and utilities like heat and electricity remain the same regardless of whether the temporarily incarcerated individual is present in the household or not. Even if the family is not immediately evicted, it is the logical reality that when an already delicate budget is further strained upon the reduction of Cash Assistance benefits, forced sacrifices are imposed on families. Under such precarious economic conditions families may be forced to forego food, fuel, or medication in order to retain their housing. In some cases this reduced budget may even drive the family into homelessness because of an inability to pay rent. Such consequences, aside from the obvious harm experienced by families, also lead to an inevitable increase in the cost to the city to provide emergency services.

Aside from maintaining a secure household for the family, these allowances for shelter, utilities, and fuel also help to ensure that the temporarily incarcerated individual has a safe and stable home to return to when he or she is discharged. Often, people

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returning from short jail terms come to rely on public housing as their only means to avoid homelessness.⁵² Rates of recidivism for formerly incarcerated individuals are already high⁵³ but increase further when the individual is rendered homeless upon release from prison or jail because individuals experiencing homelessness or family crisis are more likely to be involved in criminal activity.⁵⁴ This propensity is further exacerbated because persons experiencing homelessness are more likely to be stigmatized as deviant or anti-social and, therefore, more likely to resort to illegal activities as a means of survival.⁵⁵

In New York, approximately 40 percent of persons released to their communities return to jail within one year.⁵⁶ The above-mentioned tendency of those experiencing homelessness to be involved in criminal activity is particularly relevant in the present context because recidivism rates are generally highest during the first weeks and months following the person's release.⁵⁷ Similarly, people who are released and do not have stable housing are more likely to return to prison than those who have a fixed housing arrangement.⁵⁸ It follows that when an individual has lost his or her housing during the period of incarceration—a plausible occurrence under the current interpretation of “temporary absence,”—he or she may be more likely to commit another crime and to be re-incarcerated. Conversely, by inference, if a formerly incarcerated individual is able to return to a safe home, he or she may be less vulnerable and less likely to commit a crime during the crucial weeks and months following release. Aside from the sociological consequences of criminal behavior by repeat offenders, recidivism carries with it a high economic cost for society as well. In fact, in monetary terms—based on a calculation of victimization, processing, and corrections costs in a Massachusetts study—it is estimated that the average expected cost for society to process a recidivating person is \$49,123.⁵⁹

Entire families bear the burdens of a CA recipient's incarceration under the current policy. Families are twice as likely to move to another residence or shelter when a member of the household is incarcerated.⁶⁰ When a family loses housing due to a reduction in Cash Assistance, the city then has to manage the family's crisis situation and absorb the corresponding financial, administrative, and social costs. Whereas the family would otherwise be able to retain a safe and stable home environment, homelessness introduces the associated stress and insecurity created by potential job loss, the need to procure safe shelter, poor attendance and performance of children at school, vulnerability to crime, and any number of additional circumstantial factors.⁶¹ Children experiencing homelessness have high rates of anxiety, depression and behavioral problems.⁶² It is also true that families in homeless situations are more likely to be separated and children more likely to be placed in foster care.⁶³

Regardless of whether the family is left immediately homeless, the precariousness of the situation may still result in the state intervening to place children in foster care.⁶⁴ For example, a family crisis caused by the temporary absence of a parent in a single-parent

household may be surmountable with the continuance of CA in situations where temporary caregiver could use the funds to maintain stability in the children's lives. Where CA funds are terminated, however, such an option may be unavailable and may require removing the children from the home to placement in foster care.

Statistics further indicate—in monetary terms—the clear societal benefits of maintaining family stability. Aside from the pain, stress, and crisis that result when families are separated by the state, the costs of both foster care and of family homelessness are undeniably high. It is estimated that the cost of placing two children in foster care is approximately \$34,000 per year.⁶⁵ The annual cost to taxpayers to provide emergency shelter beds to persons experiencing homelessness is estimated to be \$8,067 more than the cost of a Section 8 housing voucher,⁶⁶ which averages about \$6,805 per year.⁶⁷ This means that every time the state prevents a family from becoming homeless, the burden on the families involved—as well as that absorbed by taxpayers—is reduced. Cash Assistance and its pertaining temporary absence policy were designed in recognition of this reality. Nonetheless, HRA's improper refusal to include incarceration within the scope of eligible temporary absence situations has undermined the intended benefits of this explicit public policy objective.

A policy that, in practice, makes it more difficult for families experiencing difficult financial situations to remain intact does not further the objectives of the U.S. and New York State legislatures in establishing Temporary Assistance for Needy Families (TANF) and New York State Safety Net—programs that collectively fund Cash Assistance in New York.⁶⁸ The underlying goals of self-sufficiency and family cohesiveness remain unchanged when a household member is temporarily incarcerated. A policy that departs from those goals results in an undeniable higher cost to taxpayers. The consequences of failing to efficaciously pursue these objectives, and the resultant disruption of family stability, become economic and social problems that the city and state are forced to confront and resolve. In the face of such a reality, the benefits and real cost-savings of maintaining cohesive families by including incarceration within the scope of the temporary absence definition clearly outweigh the abovementioned costs that must otherwise be incurred by the city and state. It is with all of these considerations in mind that the temporary absence policy must include incarceration under the same standards that would be applied to any other situation that causes the temporary absence of the recipient.

IV. Incarceration and Temporary Absence: What the Data Shows

The majority of individuals who are incarcerated are detained for short periods of time. On a national level, according to the Urban Institute, jails have contact with as many people in three weeks as prisons do over the course of an entire year.⁶⁹ More than 80 percent of individuals incarcerated in jail are there for less than one month.⁷⁰ Only 13 percent are estimated to stay longer than two months, 7 percent longer than four months, and just 4 percent longer than six months.⁷¹ According to the New York City Department of Correction, in 2008, the average daily jail population was 13,850 and there were 107,516 admissions to correctional facilities.⁷² The average length of stay for city-sentenced persons was 34.3 days while that for all detainees at Rikers Island was 49.4 days.⁷³ However, the median length of stay for all persons incarcerated in New York City in 2008 was 7.74 days while that for those who served time after sentencing was just 7.70 days.⁷⁴

The majority of those detained at Rikers Island have not yet been convicted of any crime. At any given time, approximately 80 percent of detainees at the Rikers Island jail have been neither convicted nor sentenced.

Statistics show that the inmate population at Rikers Island is an inherently temporary population. Of all admissions during 2007, 28 percent were released within 3 days, 47 percent within 7 days, 58 percent within 15 days, 70 percent within 30 days, 80 percent within 60 days, 85 percent within 90 days, and 92 percent within 180 days.⁷⁵ More than two-thirds of the population is released within one month, while a noteworthy 92 percent of the individuals whose benefits would be revoked due to their incarceration actually fall

within the six-month threshold that is deemed appropriate for other “good causes” that constitute a “temporary absence.”⁷⁶

Situations where persons remain incarcerated but not convicted of any crimes illustrate perhaps the strongest case for including incarceration within the definition of “temporary absence.” Such circumstances arise when a recipient has been arrested and remains detained in jail (due to an inability to post bail) while awaiting trial or pre-trial motions. In essence, many of these inmates remain confined simply because of their indigence. In fact, the majority of those detained at Rikers Island have not yet been convicted of any crime. At any given time, approximately 80 percent of detainees at the Rikers Island jail have been neither convicted nor sentenced.⁷⁷ With that in mind, it is important to remember that our criminal justice system is grounded by a fundamental concept that presumes each accused individual to be innocent until proven guilty.⁷⁸ Despite this presumption, due to HRA’s improper exclusion of this population from the temporary absence policy, the families of those temporarily incarcerated are effectively punished by having to bear the burdens that are imposed on them due to that exclusion.

Given that such a large percentage of people in jail remain confined prior to any judicial determination of guilt and in recognition of the documented brevity of the average stay, there is a strong argument that such absences meet the definition of “temporary.” People in jail generally retain a continuing intention to return to their homes, are “prevented from doing so because of good cause”⁷⁹ and “[do] not evidence intent to establish residence elsewhere.”⁸⁰ As HRA continues to improperly limit the state regulation, both individuals and families are adversely affected when a household member is temporarily incarcerated, even in cases where the person is acquitted of the crime charged or when those charges are subsequently dropped. Since the overwhelming majority of persons incarcerated at Rikers Island fall precisely within the guidelines of what constitutes a “temporary absence” for the purposes of Cash Assistance, the regulations should be interpreted to accord such status to incarcerated individuals in order to facilitate stability in their lives as well as in the lives of the families that rely on those benefits.

V. New York’s Temporary Absence Policy: What Should Be Done

Other public benefit programs have been willing to acknowledge the need to address this uniquely vulnerable population and take into consideration the impact on dependent families. For example, Medicaid policy was recently changed to allow individuals who are incarcerated to suspend, rather than close, their Medicaid status and then reactivate it upon release.⁸¹ Generally, in other situations, where the legislature has intended to exclude incarcerated persons from eligibility, it has said so explicitly. For instance, the Social Services Law and its pertaining regulations provide that if the Agency has “reliable information” that the recipient has been “admitted or committed to an institution or prison,” he or she becomes ineligible for benefits as a member of the household.⁸² Similarly, both federal and state Food Stamp regulations exclude residents of institutions that provide more than half of their meals.⁸³ With this in mind, federal Social Security Administration regulations governing the provision of benefits are particularly instructive. Section 404.468 of the Code of Federal Regulations stipulates that no monthly benefits will be paid to individuals who are confined in jail, prison, or another kind of penal institution or correctional facility.⁸⁴ However, the regulation clarifies that the exemption from receiving benefits “applies only to the prisoner; benefit payments to any other person who is entitled on the basis of the prisoner’s wages and self-employment income are payable as though the prisoner were receiving benefits.”⁸⁵ Likewise, where families rely on CA benefits for rent and utilities, it is consistent and reasonable that such funds similarly be “payable as though the prisoner were receiving benefits” in order to support families and further the stated objectives of Cash Assistance.⁸⁶

Further guidance regarding the manner in which incarceration should be interpreted within the context of public benefits can be seen in the language of fair hearing decisions issued by OTDA. For instance, it has been held that “each case must be evaluated on a case by case basis” in order for recipients to be provided an “ongoing grant of [Cash] Assistance benefits in accordance with [their] verified degree of need.”⁸⁷ Although some fair hearing decisions have maintained that Cash Assistance, Medical Assistance, and Food Stamps may be discontinued upon incarceration, it has been established that those benefits must be restored without a new application if incarceration lasts 30 days or less and the individual remains in need.⁸⁸

HRA's exclusion of incarceration from the definition of "temporary absence" is also inconsistent with judicial interpretation of "good cause." Notably, incarceration has been held to be "good cause" to establish absence at fair hearings concerning the provision of Cash Assistance in New York.⁸⁹ Fair hearings have held that "good cause" includes "circumstances beyond the individual's control, such as but not limited to, illness of the member, illness of another household member ... a household emergency, or the lack of adequate child care..."⁹⁰ Where a recipient claims "good cause," he or she is responsible for notifying the Agency to support that claim and the Agency must then review the information provided to determine whether the evidence substantiates such a finding.⁹¹ In *Appeal of Anonymous*, the administrative law judge ("ALJ") found that the appellant's incarceration constituted a "good cause" for absence because it was an "unrelated event" and, therefore, did not justify revocation of Cash Assistance benefits.⁹² Similarly, where an appellant failed to attend a scheduled fair hearing because he was incarcerated and did not receive the letter advising him of the hearing, the ALJ in *The Matter of the Appeal of CM* excused the absence because the incarceration constituted "good cause."⁹³

Courts have held that before Cash Assistance benefits can be terminated for failure to comply with a work requirement, the non-compliance must be found to be willful.⁹⁴ Though incarceration may arguably result as a consequence of willful acts, such acts are generally "unrelated events"⁹⁵ and therefore, as such, cannot be said to constitute willful non-compliance of requirements that are directly related to participation in the Cash Assistance program. Moreover, the influence of race, class, and gender on arrest and incarceration rates cannot be ignored. According to one study completed in 2003, black males are 2.74 times and Latino males 1.76 times more likely to be arrested in Manhattan than their white counterparts.⁹⁶ Similarly, black males were found to be 1.79 times more likely and Latino males 1.25 times more likely than white males to be detained.⁹⁷ Where blacks make up 26 percent and Latinos just 24 percent of the population, such drastic racial disparities in arrest and detention rates must not be overlooked.⁹⁸ These statistics make it clear that "willful acts" are not the sole indicator to explain the context underlying an individual's arrest and policymakers must remain cognizant of this reality whenever a policy is implemented or modified.

Other states have been explicit in their inclusion of incarceration within the definition of "temporary absence." For example, in Nebraska, incarceration is "good cause" for failing to report changes in income within ten days.⁹⁹ Nebraska regulations also include incarceration in the definition of "temporary absence" by allowing an incarcerated parent, caretaker, or guardian to continue to be the payee for up to three months for allowances that ultimately benefit a dependent child.¹⁰⁰ In Oklahoma, the regulations governing household composition for income consideration expressly include incarceration as an example of "temporary absence."¹⁰¹ In Maine¹⁰² and Illinois,¹⁰³ incarceration is considered a "good cause" for failure to comply with the requirements necessary to participate in the TANF program (e.g. attending requisite meetings). Similarly, incarceration is considered "good cause" to justify failures to comply with participation requirements or absences in Alaska,¹⁰⁴ Arizona,¹⁰⁵ and Maryland.¹⁰⁶ Based on the

Simply put, incarceration should be treated no differently than any other type of circumstance that falls within the scope of "temporary absence."

often transient and temporary nature of incarceration periods that could cause Cash Assistance recipients to be affected by this policy, and consistent with findings in other jurisdictions, incarceration should be considered a "good cause" that would fall within the definition of "temporary absence" under PD #08-16-ELI.

The remedy for the disconnect between the temporary absence policy as it is written in the state regulations and the resultant effects of its improper application by HRA in practice should be neither complex nor controversial. Simply put, incarceration should be treated no differently than any other type of circumstance that falls within the scope of "temporary absence." Rather than create a special standard for how incarceration should be interpreted within the context of Cash Assistance, HRA should use the same criteria as those used to make temporary absence determinations for other situations. As previously stated, under

the general temporary absence standard, the grant of Cash Assistance may be continued as long as the participant is “reasonably expected”¹⁰⁷ to return to the home based on evidence that he or she “[d]oes not leave the United States; and [e]stablishes the intent to return to the household; and [c]omplies with all Agency requirements.”¹⁰⁸ Also, as noted above, incarceration establishes “good cause” for non-compliance with many agency requirements (e.g., a work requirement). HRA already demonstrates a willingness to remain flexible in light of exceptional circumstances, as evidenced by the current practice that allows over 50 percent of recipients to continue receiving CA for circumstances like residential treatment for substance abuse, a child’s placement in foster care, or admission to a medical facility.¹⁰⁹ It would be no less feasible to apply such waiver practices to individuals who are temporarily incarcerated. Since any continuance of Cash Assistance can be managed and monitored for cases involving incarceration just as it is for other “good causes” of temporary absence, there is no compelling justification for evaluating temporary incarceration differently than other temporary absences.

There are structural controls in place to regulate the disbursement of Cash Assistance and to ensure that only eligible individuals and families are receiving assistance. For other temporary absence cases, payments cannot continue for more than 45 days unless a caseworker has reviewed the Cash Assistance recipient’s status and it is expected that he or she will not remain in the facility for more than 180 days.¹¹⁰ This permits HRA and OTDA to allow for CA to continue for up to six months if it is “essential to retain housing and maintain the home”¹¹¹ while keeping the objective of family stability at the forefront of the policy. To further control and sustain structure in the system, when the recipient is absent for more than six months, HRA and OTDA have required the recipient to submit affirmative evidence of his or her continued intent to return to the home and that he or she is prevented from returning because of “illness or other good cause.”¹¹² Given these standards to maintain the integrity of the program, and ongoing assurance that the requisite conditions that establish a temporary absence are met, there need not be concern that the inclusion of incarceration in the definition of “temporary absence” would lead to fraudulent or unnecessary disbursement of CA funds. Thus, it follows that—consistent with goals of social and economic stability—incarceration should be evaluated in the same manner as all other temporary absence claims.

VI. Conclusion

The creation of an improper limitation on the continuance of Cash Assistance to individuals who have been temporarily incarcerated is in conflict with an unambiguous state regulation and the purpose of public benefit policies “to achieve the maximum level of self-sufficiency.”¹¹³ Such a limitation has resulted in the unintended consequences of decreased stability for families, homelessness, and increased costs for both the city and state. Evaluating situations where a member of a household is incarcerated in the same way that other “temporary absence” situations are evaluated promotes a system that is reliable, stable, effective, and true to its objectives. Where stability, family cohesiveness, and self-sustainability are the desired results of Cash Assistance, there is no defensible justification for excluding incarceration—an exclusion that ultimately prevents families from achieving either. Since it would be in the best interests of families and consistent with the intent of HRA, OTDA, and the New York State and United States legislatures, as well as with the abovementioned statistical and public policy support, HRA should revise its policies so that incarceration is evaluated no differently than any other “temporary absence” situation.

Notes

1. Funded by the federal Temporary Assistance for Needy Families program for up to 60 months. See Social Security Act, 42 U.S.C.A. §§ 601-619 (West, *Westlaw*, Current through P.L. 111-35 (excluding P.L. 111-31) approved 6-30-09). Upon expiration of the 60-month period, the funds are provided under the New York State Safety Net program. See New York City Human Resources Administration / Department of Social Services, “Temporary Cash Assistance,” <http://www.nyc.gov/html/hra/html/directory/cash.shtml> (last visited on August 3, 2009).
2. New York City Human Resources Administration / Department of Social Services, “Cash Assistance Reports” (Cash Assistance Fact Sheet), *available at* http://www.nyc.gov/html/hra/downloads/pdf/hra-facts_2009_06.pdf.
3. New York City Human Resources Administration / Department of Social Services, “Family Independence Administration,” *available at* <http://www.nyc.gov/html/hra/html/programs/fia.shtml> (last visited on August 3, 2009); see also U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, “About TANF,” *available at* <http://www.acf.hhs.gov/programs/ofa/tanf/about.html> (last visited on August 3, 2009).
4. Zaire D. Flores, Jeffrey Lin, John Markovic, and Nancy Smith, “Understanding Family Homelessness in New York City,” (Vera Institute of Justice, 2005), p. 29, *available at* http://www.nyc.gov/html/dhs/downloads/pdf/vera_Study.pdf.
5. New York City Human Resources Administration, Policy Dir. No. 02-35-ELI (30 August 2002), *hereinafter* PD No. 02-35-ELI; and New York City Human Resources Administration, Policy Dir. No. 08-16-ELI (16 April 2008), *hereinafter* PD No. 08-16-ELI.
6. 18 NYCRR § 349.4 (2007).
7. 18 NYCRR § 349.4(a)(2)(i) (2007).
8. 18 NYCRR § 349.4(a) (2007); *see also* PD No. 02-35-ELI; PD No. 08-16-ELI.
9. PD No. 08-16-ELI.
10. “City Spending Rises on Programs to Help Inmates Leaving Jail,” (New York City Independent Budget Office, June 2009), *available at* <http://www.ibo.nyc.ny.us/iboreports/dischargeplanning060309.pdf>.
11. New York City Human Resources Administration / Department of Social Services, “Family Independence Administration,” *available at* <http://www.nyc.gov/html/hra/html/programs/fia.shtml> (last visited on August 3, 2009); *see also* 42 U.S.C. § 601(a) (West, *Westlaw*, Current through P.L. 111-30 approved 6-19-09) stating that the purpose of TANF is to (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families; U.S. Department of Health and Human Services, *supra* note 3.
12. *Id.*
13. N.Y. SOC. SERV. LAW § 131-a(2)(a-1) (West, *Westlaw*, Current through L.2009, ch. 1 to 14, 16 to 43 and 50 to 59); 18 NYCRR § 352.2(d) (2007); *see also* Community Service Society, “Benefit Tools,” *available at* http://www.cssny.org/userimages/downloads/Needs%20Based_04_09.pdf; Don Friedman, “Cash Assistance,” Leslie Boutin, ed. (Center for Benefits and Services, June 2008), *available at* http://www.cssny.org/userimages/downloads/PublicAssistance_.pdf.
14. 18 NYCRR § 352.5(d) (2007); *see also* Community Service Society, *supra* note 13; Don Friedman, *supra* note 13.
15. 18 NYCRR § 352.3(a) (2007); *see also* Community Service Society, *supra* note 13; Don Friedman, *supra* note 13.
16. N.Y. SOC. SERV. LAW § 131-a(2)(a-1).
17. *Temporary Assistance Source Book*, (New York State Office of Temporary and Disability Assistance, March 2009), p. 31, *available at* <http://www.otda.state.ny.us/main/ta/TASB.pdf>.
18. 18 NYCRR § 352.30(a) (2007); *Temporary Assistance Source Book*, *supra* note 17, at p. 576.
19. *Id.*
20. 18 NYCRR § 349.4(a); see PD No. 02-35-ELI and PD No. 08-16-ELI.
21. *Id.*
22. 18 NYCRR § 349.4(a)(2)(i) (2007).
23. 18 NYCRR § 349.4(a)(2)(ii) (2007); 18 NYCRR § 349.4(a)(2)(iii) (2007).
24. PD No. 08-16-ELI.
25. PD No. 02-35-ELI; PD No. 08-16-ELI.
26. *Id.*
27. 18 NYCRR § 349.4 (2007).
28. PD No. 02-35-ELI.
29. PD No. 08-16-ELI.
30. *Id.*
31. The New York City Department of Correction reports that the average stay for all detainees at New York City’s jail at Rikers Island is 49.4 days and that 92 percent of all admissions are released within 180 days. N.Y.C. Department of Correction, “DOC Statistics,” *available at* http://www.nyc.gov/html/doc/html/stats/doc_stats.shtml. The median stay of all inmates at Rikers Island in 2008 was just 7.74 days. Independent Budget Office, *supra* note 10.
32. E-mail from Vaughn J. Crandall, Assistant Deputy Chief of Staff, Office of the Commissioner, N.Y.C. Department of Correction, (Nov. 25, 2008, 10:22 EST (on file with author).
33. PD No. 08-16-ELI.
34. Memorandum from Bill Faulkner, New York City Human Resources Administration to James Whelan, Deputy Commissioner, New York City Human Resources Administration, (June 16, 2003).
35. New York City Human Resources Administration / Department of Social Services, “Cash Assistance Reports,” (Cash Assistance – Caseload Engagement Status) *available at* <http://www.nyc.gov/html/hra/downloads/pdf/citywide.pdf> (last visited on August 3, 2009). This report indicates that as of July 19, 2009, of the 172,106 persons receiving CA in undercare or “engageable” cases, 86,680 were excused from work assignments and continued to receive benefits.
36. *Id.*
37. PD No. 02-35-ELI; PD No. 08-16-ELI.
38. PD No. 08-16-ELI.
39. E-mail from James Whelan, Deputy Commissioner, New York City Human Resources Administration, (September 9, 2008, 16:05:53 EST) (on file with author).
40. *Temporary Assistance Source Book*, *supra* note 17, at p. 415; New York State, “What You Should Know About Your Rights and Responsibilities (When Applying for or Receiving Benefits),” (February 2007), p. 22; *see also* 18 NYCRR § 387.17(e)(1)(ii) (2007).
41. 18 NYCRR § 358-2.12 (2007); *see also* New York State Office of Temporary and Disability Assistance, (Administrative Hearings), <http://www.otda.state.ny.us/oah/>.
42. 18 NYCRR § 358-3.1(b)(3) (2007).
43. 18 NYCRR § 358-5.9(a) (2007).
44. 18 NYCRR § 358-2.23 (2007).
45. 18 NYCRR § 358-3.3(d)(1)(iv) (2007).
46. *In the Matter of the Appeal of CH from a determination by the*

- Nassau County Dep't of Soc. Serv.*, FH No. 2996554H (N.Y.S. Office of Temporary and Disability Assistance, October 18, 1998).
47. PD No. 08-16-ELL; *see also* 18 NYCRR § 387.14(a)(5)(iii)(f) (2007) [Food Stamps only].
 48. N.Y. SOC. SERV. LAW § 131-a(2)(a-1) (West, *Westlaw*, Current through L.2009, ch. 1 to 14, 16 to 43 and 50 to 59); 18 NYCRR § 352.2(d) (2007); *see also* Community Service Society, *supra* note 13.
 49. 18 NYCRR § 352.5(d) (2007); *see also* Community Service Society, *supra* note 13.
 50. 18 NYCRR § 352.3(a) (2007); *see also* Community Service Society, *supra* note 13.
 51. *Id.*
 52. Caterina Gourvis Roman and Jeremy Travis, *Where Will I Sleep Tomorrow? Housing, Homelessness, and the Returning Prisoner*, (Fannie Mae Foundation, 2006), p. 397, *available at* [http://www.mi.vt.edu/data/files/hpd%2017\(2\)/hpd_1702_roman.pdf](http://www.mi.vt.edu/data/files/hpd%2017(2)/hpd_1702_roman.pdf).
 53. A U.S. Department of Justice study showed that of nearly 300,000 prisoners discharged in 15 states, 67.5 percent were rearrested within three years of their release. Patrick A. Lanan, Ph.D., and David J. Levin, Ph. D., "Recidivism of Prisoners Released in 1994," (U.S. Department of Justice, Bureau of Justice Statistics, June 2002), p. 1, *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf>.
 54. Greg A. Greenberg, Ph.D., and Robert A. Rosenheck, M.D., "Jail Incarceration, Homelessness, and Mental Health: A National Study," *Psychiatric Services* 59:2 (February 2008), pp. 170, 170-76 (indicating correlation between homelessness and involvement in criminal activity), *available at* <http://psychservices.psychiatryonline.org/cgi/reprint/59/2/170>; *see also* Roman and Travis, *supra* note 53, at p. 395.
 55. Dennis P. Culhane, Ph.D., and Steven Metraux, Ph.D., "Homeless Shelter Use and Reincarceration Following Prison Release," (University of Pennsylvania, 2002), p. 3, *available at* http://povertyandhomelessness.wikispaces.com/file/view/dennis_culhane_prison_paper.pdf.
 56. Independent Budget Office, *supra* note 10.
 57. Amy L. Solomon et al., "Life After Lockup," (Urban Institute, May 2008), p. 43, *available at* http://www.urban.org/UploadedPDF/411660_life_after_lockup.pdf.
 58. *Id.* at p. 19.
 59. This calculation is based on a statistical analysis of the average victimization, processing, and corrections costs in each of four categories of offenses: violent, property, drug, and public order. Processing costs are based on estimates in the costs of investigation, arrest, prosecution, court-related costs, as well as the average costs of labor for time spent by professionals working on the case. Though the true costs of victimization concededly cannot be determined, the study based such costs on economic literature that included medical expenses resulting from injury, productivity losses, and intangible costs associated with pain and suffering. The corrections cost is based on a mean sentence of 263 days across offenses and uses an average cost of \$78/day as reported by Hampden County, MA, where this unique and extensive study was carried out. Thus, the figure cited, \$49, 123 represents the average total cost of victimization, processing, and corrections for an offense irrespective of which "type of offense" is committed. John Roman and Aaron Chalfan, "Does it Pay to Invest in Reentry Programs for Jail Inmates?" (Urban Institute, June 2006), p. 20, *available at* http://www.urban.org/projects/reentry-roundtable/upload/roman_chalfan.pdf.
 60. Zaire D. Flores et al., *supra* note 4.
 61. National Alliance to End Homelessness, "Promising Strategies to End Family Homelessness," (Freddie Mac and National Alliance to End Homelessness, June 2006), p. 6, *available at* <http://www.hoopsforthehomeless.org/docs/hoopspaperfinal.pdf>.
 62. *Id.*
 63. *Id.*
 64. N.Y. FAM. CT. ACT § 1055 (West, *Westlaw*, Current through L.2009, chapters 1 to 14, 16 to 43 and 50 to 59).
 65. *Id.* at 23.
 66. By means of the Section 8 Housing Assistance program, the New York City Housing Authority provides needy families with vouchers that pay part of the rent for eligible families. New York City Housing Authority, Guide To Section 8 Housing Assistance Program 1 (May 2008), *available at* <http://www.nyc.gov/html/nycha/downloads/pdf/070213N.pdf>; *see also* U.S. Housing Act of 1937, 42 U.S.C.A. § 1437f(o) (West, *Westlaw*, Current through P.L. 111-35 (excluding P.L. 111-31) approved 6-30-0).
 67. *Id.*
 68. New York City Human Resources Administration / Department of Social Services, "Family Independence Administration," *available at* <http://www.nyc.gov/html/hra/html/programs/fia.shtml> (last visited on August 3, 2009); *see* 42 U.S.C. § 601(a) (West, *Westlaw*, Current through P.L. 111-30 approved 6-19-09) stating that one of the four purposes of TANF is family cohesiveness by "encourag[ing] the formation and maintenance of two-parent families"; *see also* U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, <http://www.acf.hhs.gov/programs/ofa/tanf/about.html> (last visited on August 3, 2009).
 69. Amy L. Solomon et al., *supra* note 58, at p. 7.
 70. *Id.* at pp. 5-6.
 71. *Id.*
 72. New York City Department of Correction, *supra* note 31.
 73. *Id.*
 74. Independent Budget Office, *supra* note 10.
 75. New York City Department of Correction, *supra* note 31.
 76. 18 NYCRR § 349.4(a)(2) (2007).
 77. E-mail from Vaughn J. Crandall, *supra* note 32.
 78. *Coffin v. United States*, 156 U.S. 432 (1895).
 79. 18 NYCRR § 349.4(a)(2) (2007).
 80. 18 NYCRR § 349.4(a)(i)(ii) (2007).
 81. Office of Health Insurance Programs, Administrative Directive 08 OHIP/ADM-3, April 21, 2008.
 82. 18 NYCRR § 358-3.3(d)(1)(iv) (2007) [Notice only]; 18 NYCRR § 387.14(a)(5)(iii)(f) (2007) [Food Stamps only]; *see also* 7 C.F.R. § 273.1(b)(7)(vi) (*Westlaw*, Current through June 12, 2009) [Food Stamps only].
 83. 7 C.F.R. 273.1(b)(7)(vi); 18 NYCRR § 387.14(a)(5)(iii)(f) (2007).
 84. 20 C.F.R. § 404.468 (West, *Westlaw*, Current through June 12, 2009).
 85. *Id.*
 86. New York City Human Resources Administration, *supra* note 11; *see also* 42 U.S.C. § 601(a), *supra* note 11; U.S. Department of Health and Human Services, *supra* note 3.
 87. *In the Matter of the Appeal of BJ from a determination by the Broome County Dep't of Soc. Serv.*, Case No. 087972; FH No. 2037464H (Office of Temporary and Disability Assistance, October 12, 1993); *In re Appeal of CH*, FH No. 2996554H.
 88. *Id.*
 89. *In the Matter of the Appeal of CM from a determination by the Suffolk County Dep't of Soc. Serv.*, FH No. 4286162Z (Office of Temporary and Disability Assistance, February 23, 2005); *In the Matter of the Appeal of [Appellant] from a determination by the Erie County Dep't of Soc. Serv.*, FH No. 3307248R (Office of Temporary and Disability Assistance, March 29, 2000).

90. *In the Matter of the Appeal of Anonymous from a determination by the Broome County Dep't of Soc. Serv.*, Case No. P119134, FH No. 3563886Y (Office of Temporary and Disability Assistance, July 18, 2001).
91. *Id.*
92. *Id.*
93. *In re Appeal of CM*, *supra* note 90.
94. *Matter of McKillen v. Perales*, 133 A.D.2d 270 (2d Dep't 1987); *see also Allen v. Blum*, 58 N.Y.2d 954 (1983); *Matter of Ray v. Blum*, 91 A.D.2d 822 (4th Dep't 1982).
95. *In re Appeal of Anonymous*, *supra* note 90.
96. Andrew Golub, Bruce D. Johnson, and Eloise Dunlap, "The Race/Ethnicity Disparity in Misdemeanor Marijuana Arrests in New York City," *Criminology & Public Policy* 6:1 (2007), pp. 131, 140-145, 160 (illustrating data to show disproportionate rates of arrests and detainment of individuals based on race), *available at* <http://www.pubmedcentral.nih.gov/picrender.fcgi?artid=2561263&blobtype=pdf>; *see also* Andrew Gelman, Jeffrey Fagan & Alex Kiss, "An Analysis of the NYPD's Stop-And-Frisk Policy in the Context of Claims of Racial Bias," *Columbia Public Law Research Paper* No. 05-95 (June 16, 2006), p. 19 (explaining the increased likelihood that people of color will be "stopped" by police), *available at* <http://www.stat.columbia.edu/~gelman/research/unpublished/frisk7.pdf>.
97. *Id.*
98. *Id.*
99. 468 NEB. ADMIN. CODE § 015.02B (West, *Westlaw*, Current through Mar. 31, 2009).
100. 468 NEB. ADMIN. CODE § 006.01D1 (West, *Westlaw*, Current through Mar. 31, 2009).
101. OKLA. ADMIN. CODE § 340:40-7-6(c)(B) (West, *Westlaw*, Current through May 1, 2009).
102. 10-144 ME. CODE R. § CH. I (West, *Westlaw*, Current through Feb. 2009).
103. ILL. ADMIN. CODE tit. 89, § 112.80(a)(2) (West, *Westlaw*, Current through Feb. 2009).
104. ALASKA ADMIN. CODE tit. 7, § 45.261(a)(6) (West, *Westlaw*, Current through Apr. Reg. 189).
105. ARIZ. ADMIN. CODE § R6-12-1306(B)(3) (West, *Westlaw*, Current through Sept. 30, 2008).
106. MD. CODE REGS. 07.03.16.08(D)(8) (West, *Westlaw*, Current through June 5, 2009).
107. *Id.*
108. 18 NYCRR § 349.4(a); *see also* PD No. 02-35-ELI and PD No. 08-16-ELI.
109. New York City Human Resources Administration / Department of Social Services, "Cash Assistance Reports," (Cash Assistance – Caseload Engagement Status), *available at* <http://www.nyc.gov/html/hra/downloads/pdf/citywide.pdf> (last visited on August 3, 2009).
110. *Id.*
111. PD No. 02-35-ELI; PD No. 08-16-ELI.
112. 18 NYCRR § 349.4(a)(2)(i) (2007).
113. New York City Human Resources Administration / Department of Social Services, "Family Independence Administration," *available at* <http://www.nyc.gov/html/hra/html/programs/fia.shtml> (last visited on August 3, 2009).

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