

# Behavioral Health Problems, Ex-Offender Reentry Policies, and the “Second Chance Act”

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The federal “Second Chance Act of 2005” calls for expanding reentry services for people leaving prison, yet existing policies restrict access to needed services for those with criminal records. We examined the interaction between individual-level characteristics and policy-level restrictions related to criminal conviction, and the likely effects on access to resources upon reentry, using a sample of prisoners with Axis I mental disorders (n=3073).

We identified multiple challenges related to convictions, including restricted access to housing, public assistance, and other resources. Invisible punishments embedded within existing policies were inconsistent with the call for second chances. Without modification of federal and state policies, the ability of reentry services to foster behavioral health and community reintegration is limited. (*Am J Public Health*. 2005;95:1718–1724. doi:10.2105/AJPH.2005.065805)

*This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can't find work, or a home, or help, they are much more likely to commit crime and return to prison. . . . America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life.*

President George W. Bush,  
2004 State of the Union

The bipartisan “Second Chance Act of 2005: Community Safety Through Recidivism Prevention,” which was introduced in the US House of Representatives in April 2005 (the Senate is expected to introduce a companion bill later this year), calls for strengthening community reentry services for people leaving prisons and jails.<sup>1</sup> Such services, which include public assistance, housing, health and mental health services, education, and job training, would be delivered through the collaboration of the criminal justice, public health, and social service systems. The legislation also highlights the need for providing programs and services to people while they are in prison, as well as mechanisms for maintaining their relationships with their families and children.

States seeking Justice Department funding under this legislation are expected to review the various laws, rules, and practices that are “hurdles to a prisoner’s

reintegration into the community.”<sup>1</sup> Hurdles to reintegration represent the collateral consequences<sup>2–5</sup> or collateral sanctions of criminal convictions, also referred to as “invisible punishments,”<sup>6,7</sup> that typically are not part of the formal sentencing process. These hurdles, which are mandated by statute, apply specifically to people released from prison; they include civil restrictions, such as losing the right to vote, and particular types of conditions or bans that affect the completion of job applications, the securing of public or private housing, or application for public assistance and other services relevant to social functioning. They are, in effect, exclusionary public policies that regulate reentry experiences and, in essence, perpetuate punishment after release by assigning special conditions or bans on people with felony convictions.

The Second Chance Act acknowledges a significant social problem. One goal of community reentry, or reintegration, is to reduce recidivism. To lead a crime-free life, former prisoners need access to resources and opportunities that allow and encourage positive participation in society. Each year, over 600 000 people pass from prisons or jails to the community.<sup>8</sup> These individuals arrive in the community with multiple disadvantages: drug and alcohol dependence, mental illness, inadequate or outdated job skills, and limited educational attainment. They also arrive with

criminal labels that limit their ability to secure housing, treatment services, and employment. If they are to get a second chance, some form of public support is needed to help them resume a productive, crime-free life. Yet 3 decades of public policies aimed at being “tough on crime” have eliminated public benefits, such as Temporary Assistance for Needy Families, general assistance, food stamps, and public housing typically relied on by people in transition, regardless of when they left prison.

These invisible punishments have a further exclusionary and stigmatizing effect on ex-offenders in terms of civic and family participation. The Second Chance Act calls for policy and program development that will facilitate the maintenance of family relationships where appropriate. In 1999, an estimated 1.5 million children (younger than 18 years) had a parent in prison.<sup>9</sup> A felony conviction, however, may lead to the termination of parental rights. People with criminal convictions frequently lose their right to vote and participate on juries; if and when these rights can be reinstated varies by state. It is estimated that 4.7 million Americans are disenfranchised through a felony conviction; Black men, who make up 6% of the US population, account for 30% of those disenfranchised.<sup>10</sup> A review of state policies that hinder full civic participation is called for in the Second Chance Act. The proposed

legislation recognizes the importance of fostering social inclusion through family and community connections, but, here again, existing statutes often put important opportunities out of reach, thus thwarting the potential for community reintegration.

There is growing concern that people leaving prison become permanently displaced, especially those with histories of violence and drug convictions. Concerns for how people leaving prison reenter their communities, what societal institutions do to foster or inhibit this reentry, and the impacts on public health and safety have been recycled again and again over time.<sup>6–8,11–26</sup> Only recently has attention focused on how existing public policies militate against second chances. We describe the interaction between individual-level characteristics and policy-level restrictions and analyze how this interaction is likely to affect the reintegration of people leaving prison using a sample of New Jersey state prisoners with an Axis I mental illness<sup>27</sup> (n=3073). We use these data to show how opportunities for a second chance are impeded by the interaction between convictions and restrictive public policies, an interaction that serves to extend punishment past the prison gates.

### Behavioral Health Problems in Prison

According to the Bureau of Justice Statistics, an estimated 16% of adult prisoners report having either a mental disorder or an overnight stay in a psychiatric facility.<sup>28</sup> This translates into nearly 300 000 persons in active need of mental health treatment while detained and after release, yet only a fraction of those who need treatment ac-

tually receive it.<sup>29–32</sup> It is further estimated that approximately two thirds of these individuals are under the influence of alcohol or drugs at the time of the offense.<sup>28</sup> Generally speaking, a history of substance use is equally common among all state prisoners, regardless of their mental health status. Nearly 60% of all state prisoners report using substances in the month prior to their offense.<sup>33</sup>

### Prison Programs and Reentry Planning

Prisons are constitutionally required to provide medical and behavioral health treatment to prisoners in need of such care.<sup>34–37</sup> Standards for mental health care have been defined by the National Commission on Correctional Health Care<sup>38</sup> and the American Psychiatric Association.<sup>35</sup> These standards include, but are not limited to, screening, evaluation, crisis intervention, suicide prevention, psychiatric medications, case management, therapy/counseling, special programs and housing units, and reentry planning. On average, 1 in 8 state prisoners is engaged in structured counseling (about 80% of the estimated number needing it) and 1 in 10 is receiving psychotropic medications (nearly 60% of the estimated number needing them).<sup>39</sup> Considerably less substance use treatment is available to state prisoners. Roughly 1 in 4 state prisoners receive treatment for substance use problems, with a higher percentage (40%) receiving treatment if they reported drug use at the time of their offense.<sup>33</sup> This gap between need and active substance abuse treatment is explained in part by the courts' repeated rejection of a constitutional right to substance

abuse treatment or rehabilitation in correctional settings, so long as prison officials are not deliberately indifferent to a prisoner's serious medical needs.<sup>40</sup>

It has been recommended<sup>41–44</sup> that prisons provide reentry planning. Generally, reentry planning for persons with mental health problems leaving prison is minimal and, when provided, typically includes a referral to a provider and a supply of medications. Hammet et al. found that nearly three quarters of state prison systems provided referrals for public benefits, substance abuse treatment, and psychosocial support, but only about one third of these facilities made appointments for these services.<sup>45</sup> The New Jersey Department of Corrections releases prisoners with mental illness with a 2-week supply of medications and a referral to a community-based provider, which is considered generous by national standards.

### Social Context of Receiving Communities

Most people in prisons have entered the criminal justice system from economically disadvantaged communities, and, more often than not, they will return to the same community (or a similar one) after release.<sup>19,46–48</sup> The complex and significant association between poverty, crime, health and mental health, neighborhood quality, residence stability, and economic opportunities (such as the number of businesses in a neighborhood and distance from residence to higher-paying jobs) is well established: where one lives matters. The immediate effect of this constellation of factors on a person returning to the community is that she or he is poor and in need of basic resources and op-

portunities, as well as therapeutic services. Many of these resources and services are provided or funded by the public sector.

To investigate how current public policies are likely to affect incarcerated persons with mental illness, with or without an addiction disorder, we examined the types of convictions this population received and how the conviction would affect access to resources and opportunities given the conviction-based restrictions found within federal and state policies. Of interest is how these policies affect the ability of people leaving prison with behavioral health problems to access the resources and opportunities they need to avoid criminal activity and to reintegrate into the community.

## METHODS

### Data Sources

Data for this study came from 2 sources. Data on incarcerated persons with mental illness were compiled from the electronic clinical and classification data systems maintained by the New Jersey Department of Corrections. The data set includes information on demographics, history of incarceration, and psychiatric diagnosis for all adult prisoners with special needs in New Jersey prisons on August 10, 2002 (n=3189). "Special needs" means that a prisoner was deemed through a clinical assessment to be in need of mental health treatment.<sup>49</sup> For purposes of this analysis, the sample was restricted to those prisoners with an Axis I mental disorder diagnosis (n=3073). The breakdown of diagnoses was as follows: schizophrenia (n=633); major depression (n=773); bipolar (n=504);

depression (n=418); psychotic disorder (n=141); adjustment disorder (n=237); anxiety disorder (n=117); posttraumatic stress disorder (n=90); all others (major mood, borderline, obsessive-compulsive disorder, panic disorder, phobia, attention deficit disorder/attention deficit hyperactivity disorder; n=160).

Policy data were compiled from multiple sources, including research institutes and federal and state governments.<sup>50–56</sup> The public policies selected for analysis were those that have a direct impact on access to resources and opportunities that are central to community reentry and reintegration. These policies have 2 dimensions. The first concerns the *types of offenses* that, by law, invoke restrictions. Some policies focus on broad classes of offenses, such as any felony, while others are limited to particular types of offenses, such as drug-related offenses and violent offenses. The second dimension is the *duration of restricted access*. Policies include lifetime bans, permanent restrictions, conditional requirements, and temporary prohibitions.

### Analytic Strategy

Prisoners often have multiple convictions that vary by type and level of seriousness. For analytical purposes, we categorized prisoners with special needs by their most serious conviction associated with the current incarceration. Using the most serious conviction as the indicator, we then classified them as violent (murder, manslaughter, assault, rape/sexual assault, or robbery) or nonviolent; nonviolent convictions were further categorized as drug offenses, parole violation, and all others. While all of the special-needs prisoners in this

study had an Axis I mental disorder, some had multiple diagnoses. For purposes of this analysis, prisoners were classified according to their most serious diagnosis only. We also determined the number of prisoners with co-occurring disorders and their distribution across conviction categories. To examine gender differences, we used analysis of contingency tables and a  $\chi^2$  test statistic.

Public policy restrictions were categorized by type of resource or opportunity affected, crime category, and restriction type. Crime type included 3 categories: violent offense, nonviolent drug-related offense, and other nonviolent offense. Restriction types were lifetime, conditional, and temporary. Lifetime restrictions impose permanent conditions or bans on access. Conditional restrictions require something in return for access to the resource or opportunity, or they place limitations on the individual, which vary depending on the circumstances. Temporary restrictions impose a specific time limit.

Ninety-five percent of all prisoners will be released to the community; 3% to 5% are sentenced to life in prison or will die while in custody.<sup>57</sup> Therefore, although we do not have individual-level release data for this sample, it is realistic to assume that virtually all 3073 prisoners with an Axis I mental disorder in this sample will eventually be released and returned to their communities.

## RESULTS

### Sample Characteristics

The sample was 85% male, with a median age of 35 years; 68% were aged 18 to 40

years. The breakdown by race/ethnicity was as follows: Black, 47.6%; White, 40.2%; Hispanic, 9%; all others, 3.2%. Eighty percent of the population (n=2469) had 1 of the following 5 Axis I diagnoses: schizophrenia (n=633), major depression (n=773), bipolar (n=504), depression (n=418), and psychotic disorder (n=141). Forty-seven percent also had an addiction disorder (n=1446).

### Criminal Conviction, Gender, and Diagnosis

Just over half (51.4%) of the people with mental illness in our sample had been convicted of a violent crime (n=1579), and 48.6% had been convicted of a nonviolent crime (n=1494) (Table 1). Men were more likely to have been convicted of a violent crime than women ( $\chi^2_3=181.31, P<.001$ ). Within the nonviolent category, most men had been convicted of crimes other than drug offenses and violation of probation/parole; for women, however, the most common nonviolent conviction was drug related. Of those with co-occurring addiction disorders, 43.6% were convicted of a violent offense (n=631) and 56.4% were convicted of a nonviolent offense (n=815). Males with co-occurring addiction disorders were more likely to be convicted of a violent crime than their female counterparts ( $\chi^2_3=121.74, P<.001$ ).

### Restricted Public Policy Domains

Successful community reintegration requires a confluence of personal, material, civil, and legal resources and opportunities. Former prisoners return to their communities with significant disadvantages; they need a great

deal of assistance to achieve a level of stability and to obtain positive outcomes. We have identified policy restrictions in 8 general categories: employment; housing; public assistance; education; parental rights, adoption, and foster care; driver's licenses; voting and jury duty; and the expunging of the former prisoner's criminal record. These domains have been referred to as components of the "social safety net" that could provide support for those recently released from prison.<sup>58(p10)</sup> Table 2 summarizes the invisible punishments that serve as roadblocks to inclusion in the community, as established by state and federal policies.

### Public Policies Affecting Special Needs Prisoners Upon Release

All of the individuals in our sample face lifetime consequences from their felony convictions in the areas of employment, housing, education, parental rights, and jury duty. In addition, each may face some form of conditional or temporary restriction on employment, housing opportunities, voting, and expunging of criminal record upon release from prison (Table 2).

*Nonviolent/nondrug convictions.* Persons convicted of nonviolent offenses (48.6% of our sample) could face conditional restrictions on access to public housing and assistance (if non-compliant with court orders, for example). They can be rejected by a college/university or by a potential employer because of their criminal record. Incarceration, even for short periods of time, can invoke custody termination proceedings. Recently released individuals may have to document their compliance with a treatment program or with

**TABLE 1—Types of Convictions of Inmates With Diagnoses of Mental Illness and Addiction Disorder, by Gender: New Jersey Department of Corrections, 2002**

Behavioral Health Diagnosis	Most Serious Conviction Associated With Current Incarceration, n (%)				
	Violent Offense (n = 1579)	Total Nonviolent Offense (n = 1494)	Drug Offense (n = 559)	Violation of Parole/Probation (n = 132)	All Others (n = 803)
<b>Axis I mental disorder</b>					
Women (n = 460)	165 (35.9)	295 (64.1)	130 (44.1)	65 (22)	100 (33.9)
Men (n = 2613)	1414 (54.1)*	1199 (45.9)	429 (35.8)	67 (5.6)	703 (58.6)
Total (n = 3073)	1579 (51.4)	1494 (48.6)	559 (37.4)	132 (8.8)	803 (53.8)
<b>Axis I mental disorder and an addiction disorder</b>					
Women (n = 293)	86 (29.4)	207 (70.6)	88 (42.5)	52 (25.1)	67 (32.4)
Men (n = 1153)	545 (47.3)*	608 (52.7)	225 (19.5)	33 (2.9)	350 (30.4)
Total (n = 1446)	631 (43.6)	815 (56.4)	313 (38.4)	85 (10.4)	417 (51.2)

\*P < .001.

other conditions of parole/probation in order to secure public housing. Housing regulations stipulate that applicants can be denied housing if they intend to cohabit with a person who has a history of criminal involvement. Further, any tenant (with or without a criminal record) can be evicted if any household member (with or without a criminal record) commits a new crime, regardless of the tenant's involvement in or knowledge of the criminal act.

**Drug offenses.** Within the non-violent category, 37% of the sample were convicted of drug-related crimes and face lifetime restrictions on access to public housing as well as conditional and temporary restrictions on educational opportunities; further, their ability to drive, secure or retain custody of their children, vote, and have their criminal record expunged is limited, for varying periods of time (Table 2). Persons convicted of felony drug offenses are also permanently prohibited from having their criminal records expunged, and if convicted of dis-

tributing drugs, they are permanently prohibited from enrolling in the state's welfare reform program, Work First New Jersey. Consideration for public assistance is given to those with drug possession convictions only if they are enrolled in a state-approved treatment program. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 imposes a lifetime ban on monetary assistance or food stamps for those with a state or federal felony conviction for drug use or sale. The ban can be modified; New Jersey is 1 of 21 states with allowances to do so. Twenty-two states, however, have adopted the ban in its entirety.<sup>59</sup> Suspension of a driver's license can last for 6 to 24 months, with no exceptions made for getting to and from work.<sup>59</sup>

**Violent offenses.** Persons with a conviction for a violent offense (51.4% of our sample) face lifetime consequences across 6 of the 8 identified policy domains (employment; housing; education; voting and jury duty; parental rights, adoption, and foster

care; and expunging of criminal record). For example, there is no time limit to potential employers' ability to access arrest or conviction records, regardless of when the event occurred. Also, there is no time limit on ineligibility for public housing if there is a history of violence.<sup>59</sup>

**Parole violations.** Persons with a conviction for violating conditions of parole (9% of nonviolent offenses) may no longer be eligible for public assistance, including eligibility for the Work First New Jersey program. Nationwide, 35% of all prison admissions (n=209 782) in 1998 were for violations of parole or other release conditions.<sup>41</sup> There was a 15% increase in the number of parole violators admitted to New Jersey prisons between 1990 and 1999.<sup>60,61</sup> Violations of parole, which do not necessarily involve the commission of a new crime, include breaking curfew, changing residence without notifying a parole officer, failure to pay child support, and drug use. A study of New Jersey parole practices found that "roughly half of those returned to prison

for parole violations were technical violators and had not been charged with a new crime."<sup>58(p45)</sup> Further, a person can be held liable for Supplemental Security Income payments received while a warrant was issued for a felony charge or a parole/probation violation.

## DISCUSSION

We describe the invisible restrictions embedded in federal and state policies that are likely to affect people with mental illness returning to the community from prison. A number of these offenders could face a combination of the restrictions described in this section; the findings reported here do not incorporate the consequences faced by someone convicted of both violent and drug offenses, because the analyses focused on the most serious conviction only. There are other restrictions, but they tend to be particular to localities, agencies, or programs (e.g., stipulations that a person on certain psychiatric medications will not be accepted by the substance abuse treatment program), and while important, they are beyond the scope of this article.<sup>62,63</sup> Persons with criminal records, particularly those including violent convictions, who need behavioral health treatments are likely to face greater difficulties locating behavioral health programs willing to help them because staff are not adequately trained to manage violent tendencies, while agencies are concerned about the liabilities associated with violent clients.<sup>20</sup>

It is well-known that the label "criminal" elicits fear and invites social distance. It is less generally understood how criminal



**TABLE 2—Restrictions Related to Criminal Convictions as Established in Public Policies and Applied in New Jersey****Employment**

## Lifetime restrictions

- Employers may ask about any arrests/convictions.
- Government agencies deny applications for certain types of professional licenses.
- Ex-offenders must report felony convictions on employment and license applications.
- Ex-offenders are statutorily banned from 22 categories of employment, depending on type of conviction, including the following: public sector jobs, public schools, housing authorities, New Jersey Turnpike Authority, airports, banks, and places where liquor is served or sold retail.
- Employers are required to conduct criminal background checks on applicants seeking jobs as alcohol/drug counselors, nursing home staff, social workers, hazardous waste workers, or staff of facilities for the mentally ill.

Conditional restriction: ex-offenders with specific convictions are disallowed employment in the home health care field.

**Public assistance**

Lifetime restriction: ex-offenders with a drug distribution conviction are banned from general assistance.

## Conditional restrictions

- Benefits can be “turned off” for failure to comply with court orders or conditions of parole/probation.
- Persons on probation/parole may not be eligible while in violation of supervision stipulations. These persons may have to repay Supplemental Security Income benefits received while a warrant is issued for arrest.
- Ex-offenders with nondistribution drug convictions are eligible for Temporary Assistance for Needy Families, general assistance, or food stamps only if they are enrolled in—or have completed treatment with—a licensed program and pass drug tests during, and 60 days after, the treatment program.

**Driver's license**

Conditional restriction: ex-offenders can have their license suspended for failure to pay court fines, child support, insurance surcharges, or parking violations, and for failure to appear in court.

Temporary restriction: persons with drug or alcohol convictions can have their license suspended for 6 to 24 months with no restricted license issued (even for purposes of getting to or from work); a third offense can result in a 10- to 20-year suspension.

**Voting and jury duty**

Lifetime restriction: ex-offenders convicted of any indictable offenses are permanently banned from jury service.

Temporary restriction: persons incarcerated or on probation or parole are not eligible to vote.

**Housing**

## Lifetime restrictions

- Private landlords (including those accepting Section 8 subsidized housing vouchers) can reject applicants or evict residents for arrests or convictions (all crimes).
- Ex-offenders are ineligible for public housing if they have a history of violence; they may be ineligible if drug-related convictions or any crime is deemed a safety risk (varies by public housing authority, no time limit).

## Conditional restrictions (public housing)

- Persons on probation/parole may not be eligible while in violation of supervision stipulations.
- Eviction can occur if the person receiving public housing benefits allows convicted drug offender to live with him or her within 2 years of release.
- The tenant can be evicted if a household member engages in criminal behavior, whether or not tenant knew about it.

Temporary restriction (public housing): ex-offenders are banned for 3 to 5 years for felony conviction.

**Education**

Lifetime restriction: ex-offender's admission to college or university is at discretion of the institution, for any conviction.

Conditional restriction: persons with drug convictions may be ineligible for aid until a treatment program has been completed. For a conviction for possession or sale of drugs during the school year, any aid received after the conviction must be repaid.

Temporary to lifetime restriction: persons with drug convictions are ineligible for financial aid for 1 or 2 years after first or second offense, and are permanently ineligible after third offense.

**Expunging of criminal record**

Lifetime restriction: no expunging for ex-offenders with the most serious indictable offenses, including motor vehicle and drug offenses (except minor possession).

Conditional restriction: ex-offenders qualification for expunging is conditional on date, type, and number of convictions.

Temporary restriction: if there have been no prior or subsequent convictions, municipal violations of ex-offenders can be expunged 2 years after completion of sentence, disorderly and petty disorderly offenses after 5 years, and other offenses after 10 years.

**Parental rights, adoption, and foster care**

## Lifetime restrictions

- Felony conviction can be a considered factor in abandonment; child custody can be terminated.
- Lifetime ban on adoption and foster care for violent, sexual, or theft-related offenses; an adult household member convicted of any of these crimes disqualifies all household members from eligibility.

Source. References 50–56.

convictions can label individuals in ways that erode their opportunities for a second chance. These invisible punishments are meted out without consideration of material circumstances or therapeutic need. This is particularly unfortunate for people with mental illness, with and without substance abuse, for 2 reasons.

The first concerns the impact of mental illness on financial and social resources. People with mental illness and a criminal conviction are more likely to be unemployed and dependent on public assistance for support than those without mental illness.<sup>19,21,22</sup> Unemployment is likely among people with severe mental illness whether or not they have a criminal conviction.<sup>16,17,21</sup> Restrictions on types of employment, in combination with employers' ability to ask and screen for criminal convictions, can only be expected to further limit their employability.<sup>6,4</sup> Restricting access to public housing or public assistance limits their access to a usual source of support and increases dependence on families or charity. Here again the evidence is not promising. People with mental illness often have fragile and small social networks on which to draw,<sup>16,17,65</sup> making them more dependent on the limited resources of community-based organizations.

Another source of concern relates to the comorbidity of mental disorder and substance abuse. Stricter and more durable restrictions are associated with drug-related convictions, and people with substance abuse problems are more likely to have these types of convictions. For them, the conviction label is enduring (cannot be expunged),

and it can affect access to public assistance, public housing, family reunification and cohabitation, and rehabilitation. These punishments differentially affect women with co-occurring disorders, especially those with children, who have little or no work experience and minimal formal education.<sup>66,67</sup>

Examining how existing policy restrictions regulate this group of individuals illuminates the punitive nature of these policies and their impact on those needing a second chance. It is of limited value to consider who "fares worse" upon release from prison, those with or without mental illness, and that is not the objective here. We have simply brought into sharper focus, using individual- and policy-level data, the multiple obstacles faced by all prisoners who will be released, and we have highlighted how mental illness and addiction disorders will amplify these difficulties.

Invisible punishments embedded in existing public policies are inconsistent with the president's call for second chances. These policies, in effect, create a class of people who are perpetually labeled as unqualified for public support. Because of their particular conviction, they are also restricted from the very resources and opportunities that are elemental to positive and meaningful community participation. These restrictions are particularly onerous for people with severe mental illness, who are often dependent on public assistance for support. For a second chance to exist in reality for these individuals, the invisible punishments of public policies need to be replaced by the compassion assumed within the proposed second chance legislation. ■

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### Contributors

W. Pogorzelski led the writing and synthesized the analyses. N. Wolff conceived the study, assisted with the study interpretation, and contributed to the writing. K. Pan conducted data analysis. C. Blitz assisted with the study interpretation and data analyses. All authors conceptualized ideas and reviewed drafts of the article.

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