

COLLATERAL CONSEQUENCES: The Crossroads of Punishment, Redemption, and the Effects on Communities

U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING
REPORT



JUNE 2019

U.S. COMMISSION ON CIVIL RIGHTS

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- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.
- Submit reports, findings, and recommendations to the President and Congress.
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.*

*42 U.S.C. §1975a.

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Mauro Morales, *Staff Director*

U.S. Commission on Civil Rights

1331 Pennsylvania Avenue, NW
Washington, DC 20425

(202) 376-8128 voice
TTY Relay: 711

www.usccr.gov

Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities

**Briefing Before
The United States Commission on Civil Rights
Held in Washington, DC**

Briefing Report

June 2019



UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Ave., NW • Suite 1150 • Washington, DC 20425
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Letter of Transmittal

June 13, 2019

President Donald J. Trump
Vice President Mike Pence
Speaker of the House Nancy Pelosi

On behalf of the United States Commission on Civil Rights (“the Commission”), I am pleased to transmit our briefing report, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*. The report is also available in full on the Commission’s website at www.usccr.gov.

This report provides an overview of the relevant data and arguments for and against the imposition of collateral consequences on people with criminal records. Each year, federal and state prisons release more than 620,000 people to return to their communities. While these individuals have often completely exited criminal supervision (for example, through a prison sentence or probation), individuals with criminal records still face potentially thousands of collateral consequences upon reentering society. These collateral consequences are sanctions, restrictions, or disqualifications that attach to a person because of the person’s criminal history. For example, individuals with criminal histories can face barriers to voting, jury service, holding public office, securing employment, obtaining housing, receiving public assistance, owning a firearm, getting a driver’s license, qualifying for financial aid and college admission, qualifying for military service, and maintaining legal status as an immigrant. The reach of each collateral consequence extends past people with criminal records to affect families and communities.

The Commission majority (six Commissioners in favor, one Commissioner in opposition) approved key findings including the following: Collateral consequences exacerbate punishment beyond the criminal conviction after an individual completes the court-imposed sentence. Valid public safety bases support some collateral consequences, such as limitations on working with children for people convicted of particular dangerous crimes. Many collateral consequences, however, are unrelated either to the underlying crime for which a person has been convicted or to a public safety purpose. When the collateral consequences are unrelated in this way, their imposition generally negatively affects public safety and the public good.

Evidence shows harsh collateral consequences unrelated to public safety increase recidivism by limiting or by completely barring formerly incarcerated persons’ access to personal and family support. In addition, the general public, attorneys, and the courts often lack knowledge of what the totality of the collateral consequences are in their jurisdiction, how long they last, and

whether they are discretionary or mandatory, or even if they are relevant to public safety or merely an extended punishment beyond a criminal sentence. This absence of public and judicial awareness of collateral consequences of conviction undermines any deterrent effect that might flow from attaching such consequences, separate and apart from the punishment itself, to criminal convictions. The processes people must undertake to restore rights, for example through applications for pardon or for judicial record sealing, are often complicated, opaque, and difficult to access.

The Commission majority voted for key recommendations, including the following: Collateral consequences should be tailored to serve public safety. Policymakers should avoid punitive mandatory consequences that do not serve public safety, bear no rational relationship to the offense committed, and impede people convicted of crimes from safely reentering and becoming contributing members of society. Jurisdictions that impose collateral consequences should periodically review the consequences imposed by law or regulation to evaluate whether they are necessary to protect public safety and if they are related to the underlying offenses.

The Commission majority specifically calls on Congress to limit discretion of public housing providers to prevent them from categorically barring people with criminal convictions from access to public housing; lift restrictions on access to student loans based on criminal convictions, except for convictions related to financial fraud; eliminate restrictions on TANF and SNAP benefits based on criminal convictions; and require federal courts to give comprehensive notice of federal restrictions on individuals' rights before guilty plea entry, upon conviction, and upon release from incarceration.

We at the Commission are pleased to share our views, informed by careful research and investigation as well as civil rights expertise, to help ensure that all Americans enjoy civil rights protections to which we are entitled.

For the Commission,



Catherine E. Lhamon
Chair

Table of Contents

Table of Contents.....	i
ACKNOWLEDGEMENTS.....	iii
Executive Summary.....	1
Chapter 1: Introduction and Overview	9
Overview of Collateral Consequences	9
Demographics of the Corrections Population.....	18
Federal Statutes that Impose Collateral Consequences	22
State and Local Statutes that Impose Collateral Consequences	29
Restoration of Certain Rights.....	30
Notification of Collateral Consequences.....	31
Chapter 2: Access to Self-Sufficiency and Meeting Basic Needs	35
How a Criminal Record Can Affect Employment Opportunities.....	35
Criminal Background Checks for Employment.....	41
Removing Barriers to Employment for People with Criminal Records.....	47
Occupational Licensing Barriers.....	49
Fair Chance Hiring Policies	54
How a Criminal Record Can Affect Housing Opportunities.....	60
Barriers to Subsidized Housing for Individuals with Criminal Records.....	65
Barriers to Private Housing for Individuals with Criminal Records	72
How a Criminal Record Can Affect Access to Public Benefits	76
The Disproportionate Impact of Lifetime Drug Bans for Public Benefits	80
Barriers to Financial Aid for Higher Education	84
Chapter 3: Access to Civic Participation	89
Voting.....	89
The Current Landscape of State Felony Disenfranchisement Laws	90
Arguments For and Against Felony Disenfranchisement	97
The Racial Origins of Disenfranchisement Laws and Ongoing Disparities.....	104
Legal Challenges.....	108
The Restoration of Voting Rights	113
Jury Service.....	124
The Impact of Jury Exclusion on People of Color.....	129
Chapter 4: Findings and Recommendations	133
Findings.....	133
Recommendations	135

Commissioners’ Statements.....139
 Statement of Chair Catherine E. Lhamon.....139
 Statement of Commissioner David Kladney141
 Statement of Commissioner Peter N. Kirsanow145
 Joint Statement of Commissioners Gail Heriot and Peter N. Kirsanow149
 Commissioners’ Rebuttals161
 Statement of Commissioner David Kladney161

Chapter 4: Findings and Recommendations

Findings

1. Collateral consequences are pervasive, broad ranging restrictions on the rights and privileges of people with criminal convictions to participate in society and access certain benefits. These consequences exacerbate punishment beyond the criminal conviction after an individual completes the court-imposed sentence. In addition, collateral consequences affect people living on parole or probation in the community while they complete a criminal sentence.
2. Some collateral consequences, such as limitations on working with children for people convicted of particular dangerous crimes, are enacted for valid public safety reasons. Many collateral consequences are unrelated either to the underlying crime for which a person has been convicted or to a public safety purpose. When the collateral consequences are unrelated in this way, their imposition generally negatively affects public safety and the public good.
3. The convicted person generally lacks notice as to what the collateral consequences are in the jurisdiction in which she/he is charged. Except for immigration consequences, collateral consequences are not required to be included in court proceedings, plea bargaining, or counseling by attorneys. The general public, attorneys, and the courts often lack knowledge of what the totality of the collateral consequences are in their jurisdiction, how long they last, and whether they are discretionary or mandatory, or even if they are relevant to public safety or merely an extended punishment beyond a criminal sentence. This absence of public and judicial awareness of collateral consequences of conviction undermines any deterrent effect that might flow from attaching such consequences, separate and apart from the punishment itself, to criminal convictions.
4. There is scant evidence that collateral consequences act as a deterrent; however, the evidence shows harsh collateral consequences unrelated to public safety increase recidivism. This increase in recidivism is caused by limiting or by completely barring formerly incarcerated persons' access to personal and family support.
5. Many collateral consequence restrictions on professional licensing serve an anti-competitive function and work against the public interest. They hinder the chances for and likelihood of rehabilitation for the formerly incarcerated person.
6. Voting restrictions because of a criminal conviction vary sharply by state. Some states allow individuals to vote while in prison and some require individuals to submit

applications for restoration of the right to vote years after they have served their criminal sentence. Other states require a full pardon for the restoration of rights. In November 2018, Florida voters overwhelmingly required the state to restore voting rights to people with criminal convictions who have completed their sentence. The constitutional amendment was approved by a margin of 64% in favor and 35% against with more than 8 million votes cast.

7. The federal courts and some states permanently bar any person with a felony criminal conviction from sitting on a criminal jury because of a belief that such persons will be biased toward criminal defendants. Studies do not show pro-defendant biases among people with criminal convictions. Rather studies show that formerly incarcerated individuals are no more biased than other potential jurors. Some states also bar persons with felony convictions from sitting on civil juries after they have served their sentences.
8. Restrictions on public housing and public benefits, including TANF and SNAP, make people acutely vulnerable upon leaving prison. Many people who leave prison do so without money and resources for basic living expenses, which are not easily obtained in part due to the restrictions on public benefits and housing. These consequences fail to protect the public safety and can lead the formerly incarcerated person toward unlawful means to earn subsistence money. Data show that persons subject to these bans are overwhelmingly women.
9. Many jurisdictions suspend driver's licenses based on criminal convictions, unrelated to whether the restricted person's conviction involved a criminal driving violation or an offense linked to driving. These restrictions severely limit employment opportunities, leaving people unable to support themselves, which can lead to recidivism putting the public's safety at risk.
10. Access to federal financial aid for higher education is suspended for people with drug convictions, but not for other criminal convictions. This restriction is not related to drug offenses, and is not connected to a purpose that has been shown to promote the public good.
11. Employment is difficult to access for those individuals with a criminal conviction as many employers choose to use a blanket ban on hiring any person with a prior criminal conviction regardless of the offense committed by the person. In some jurisdictions employers are not permitted to inquire about criminal history on an employment application but must delay questioning and background checks about criminal history until a group of finalists are chosen by the employer. These jurisdictions do not bar employers from hiring their candidates of choice or performing background checks later in the hiring process. The EEOC has issued guidance to employers on conducting criminal background checks in ways that reduce unnecessary consequences and racial disparities.

12. The processes people must undertake to restore rights, for example through applications for pardon or for judicial record sealing, are often complicated, opaque, and difficult to access. They often require hiring a lawyer, court filing fees, collecting evidence and several appearances in court before the state will grant such restoration.
13. States, such as Pennsylvania, have instituted automatic restoration of rights and sealing of criminal records for certain offenses after a period of time with no further criminal convictions without the need for individuals to petition for record sealing.

Recommendations

1. Collateral consequences should be tailored to serve public safety. Policymakers should avoid punitive mandatory consequences that do not serve public safety, bear no rational relationship to the offense committed, and impede people convicted of crimes from safely reentering and becoming contributing members of society.
2. Jurisdictions that impose collateral consequences should periodically review the consequences imposed by law or regulation to evaluate whether they are necessary to protect public safety and if they are related to the underlying offenses.
3. Congress should pass legislation creating a process to petition for sealing federal conviction records for certain offenses, such as nonviolent crimes, after a reasonable period of time. It should create a reasonable process where a person's rights are automatically restored when no public safety concerns are present upon completion of the person's sentence. Those collateral consequences that specifically relate to the crime and implicate public safety should be lifted only after the applicant has demonstrated a reasonable period of law-abiding conduct.
4. Congress should eliminate restrictions on TANF and SNAP benefits based on criminal convictions as they do not serve the public safety or interest but do impose harsh burdens, particularly on formerly incarcerated women.
5. Congress should limit discretion of public housing providers to prevent them from categorically barring people with criminal convictions from access to public housing. The United States Department of Housing and Urban Development should provide guidance on what are reasonable periods of time that public housing agencies could permissibly consider requiring to have passed after conviction or completion of sentence before regaining access to public housing, in addition to what underlying conduct could lead to restrictions on access to public housing. In such guidance HUD should consider and list which crimes against people and property merit restrictions on entry to public housing.

This guidance should follow the best practices of state and local housing authorities that have successfully provided access to public housing to people with criminal convictions. Many people convicted of non-violent crimes should be allowed to live in public housing.

6. Congress should lift restrictions on access to student loans based on criminal convictions, except for convictions related to financial fraud. When unrelated to financial fraud, financial aid access restriction does not serve the public safety or interest. Lifting the federal ban on Pell Grants to fund in-prison college programs would enable inmates to gain valuable job skills and significantly boost their employment rates post-incarceration.
7. Congress should require federal courts to give comprehensive notice of federal restrictions on individuals' rights before guilty plea entry, upon conviction, and on release from incarceration. Notice should include how long those restrictions last, and the procedures that set out a step by step process persons must take to restore rights after release. The individual should also be given notice that there will be state and local consequences.
8. The United States Department of Justice should issue guidance sharing best practices related to collateral consequences of criminal convictions, clarifying at minimum the following points:
 - a. State and local jurisdictions should undertake a comprehensive analysis of collateral consequences authorized or required by their laws, collect them in a publicly available format, and analyze the connection of each restriction to public safety and the broader public interest. Consequences not serving the public interest should be repealed. Arrest alone should never be sufficient justification to limit rights and privileges, except as set forth by the court in which the charges are pending.
 - b. Jurisdictions should compile and clearly identify collateral consequences in a format accessible to the public. Court systems should require these consequences to be incorporated into counseling, plea bargaining, and sentencing considerations.
 - c. States should consider restoration of the right to vote to all people who have been released from incarceration or are on probation/parole and are currently disenfranchised because of criminal convictions. Denying the right to vote does not serve the public safety or interest.
 - d. States should notify people disenfranchised because of a criminal conviction when their right to vote is or can be restored, if restored automatically when that occurs, or what steps they must undertake to restore their right to vote. In states where the right to vote is restored upon release from incarceration or completion of supervision, an opportunity to register to vote and assistance to complete the process should be included as part of the completion of the exit process from prison, parole, or probation.

- e. States should eliminate blanket restrictions on jury service because of a criminal conviction as these restrictions do not safeguard the jury process. Rather, challenges to potential jurors for cause in cases where bias is presented are effective safeguards.
- f. The only federally mandated public housing restrictions on access to public housing for convicted persons are bars to Public Housing Authority residents convicted of an offense requiring lifetime sex offender registration or of producing methamphetamines on public housing grounds. For all other offenses, effective local practices to exercise discretion in determining formerly incarcerated persons' eligibility for public housing should be implemented.
- g. States should enact policies that enhance employment opportunities for people with criminal convictions while also vigorously enforcing prohibitions on racial discrimination in hiring. Such policies include training and outreach on how to consider criminal history of applicants and robust equal employment opportunity protections. Employers should not automatically disqualify a candidate with a criminal record, except in circumstances when the criminal record directly conflicts with the scope of employment.
- h. States should clarify and expand opportunities to seal or expunge criminal records. Expungement processes should be transparent and easy to navigate for people seeking record sealing.
- i. States should set standards for licensing boards and other professional licensing entities for considering granting professional licenses for those with criminal convictions. These standards should require a rational connection between the underlying conduct the conviction reveals and ability to serve in the profession. The standards should ban mandatory denials of professional licenses for any criminal conviction. States with existing standards should monitor licensing boards to ensure the standards are being followed.
- j. States should repeal restrictions on driver's licenses not related to an individual's capacity to safely operate a motor vehicle.