

October 30, 2019

FRAMEWORK AND SCOPE OF RESEARCH SUBCOMMITTEE

In concurrence with the US Commission on Civil Rights Findings and Recommendations from its June 2019 Briefing Report, the Research Subcommittee of the Council on Collateral Consequences of a Criminal Conviction hereby agrees that:

Findings¹

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.

¹ Excerpted from pps 133-135 of *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

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.

The findings in this report provide the necessary research and evidence to allow the Council to utilize the following recommendations as a guideline for the scope of the Research Subcommittee's work. Absent the from the report's findings are references to recommendations requiring federal legislative action. Therefore, the report recommendations that the Research Subcommittee will focus on are:²

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.

² Excerpted from pps 135-137 of *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

- F. 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.
- G. 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.
- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. States should repeal restrictions on driver's licenses not related to an individual's capacity to safely operate a motor vehicle.