VERA INSTITUTE OF JUSTICE

CENTER ON SENTENCING AND CORRECTIONS

Relief in Sight?

States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014

DECEMBER 2014

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FROM THE CENTER DIRECTOR

As this report makes clear, the legal and life-restricting consequences of having a criminal conviction are many, varied, and often bewildering. They can impact the most fundamental necessities of life—like a job, a place to live, and education—and affect not just the individuals with convictions but also their families. In some jurisdictions, they are onerous and numerous; you have to wonder what their creators thought they would accomplish in terms of enhancing public safety.

The breadth and reach of collateral consequences are indeed wide when one considers the range of behaviors that are considered felonies in most states: from possession of drugs found to indicate an "intent to distribute" or stealing $500 worth of goods from a garage to more clearly serious offenses, such as stalking, armed robbery, and home invasion. Yet they are all treated the same in terms of consequences long after sentence completion. No one would argue against banning those convicted of identity theft or fraud from working in a bank, but there are many other kinds of employment opportunities for which they may be suited and should be permitted to pursue.

This report documents the efforts in many states to revaluate some of these consequences, while making clear that many of the recently enacted reforms are easily undermined, worked around, or ignored. Even more frequently, the fixes are relatively insignificant or apply to such small group that they don't begin to address the problem.

Collateral consequences are, of course, just one piece of the problem. The existing system of proliferating criminal penalties and attendant collateral consequences not only remains in place, it continues to grow—for example, with hundreds of new federal offenses created over the last several years. Too often we criminalize behavior that decades ago would not have been. We add on specific category or penalty enhancements for everything from where a crime was committed to the status of the victim or intended victim. Intent is equated with commission. Too many of our criminal laws are written to respond to behavior that should be dealt with (and would more effectively be dealt with) outside the criminal justice system. And evidence on the impact of public safety is mixed or limited at best.

Other laws are written in ways that do not distinguish between truly harmful acts and those that only approximate those acts as exemplified by the overly broad definition of "violent", ensnaring people who may only possess a weapon in commission of an offense, even when it was not used, or never intended to be used. And finally, too often we respond to many members of our communities who are primarily sick, poor, homeless, or unable to care for themselves or their families with the hammer of the criminal justice system. And then we continue to hammer them long after they have satisfied our need for retribution.

Peggy McGarry
Director, Center on Sentencing and Corrections

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About this report

From 2009 through 2014, forty-one states and the District of Columbia enacted 155 pieces of legislation to mitigate the burden of collateral consequences for people with certain criminal convictions. In reviewing this legislative activity, the Vera Institute of Justice's Center on Sentencing and Corrections found that states have pursed one or a combination of seven broad approaches to reform. They created or expanded expungement and sealing remedies; issued certificates of recovery; allowed for defense downgrades; built relief into the criminal justice process; ameliorated employment-related collateral consequences; improved access to information; and addressed discrete collateral consequences. By providing (1) concise summaries of representative legislation in each area, (2) an analysis of the their limitations, and (3) recommendations for making future efforts sustainable and comprehensive, this report aims to be a practical guide for states and localities looking to enact similar reforms.

Introduction

Most people believe conviction and sentencing are the culmination of the criminal justice process. When convicted of a criminal offense, an individual will be made to pay their debt to society through a court-ordered sentence, whether by paying a fine, complying with a community service order or conditions of probation, or serving a custodial sentence either in jail or prison. However, unbeknownst to most—including those convicted—a court-sanctioned sentence does not define the whole punishment that convicted individuals must submit to in practice.[1] Due to a vast array of post-sentence civil penalties, disqualifications, or disabilities that flow from state or federal convictions—termed "collateral consequences of criminal convictions" or simply "collateral consequences"—punishment does not necessarily end with the expiration of a prison, jail, or community sentence. It can continue well beyond sentence completion, sometimes with lifetime impact, and often has adverse effects that can be transmitted to the individual's family and community.[2]

Consider a low-income person with a felony drug conviction in New York as a case in point.[3] That person will be presumptively ineligible for public housing, with obvious impacts on his or her family and household, for two to six years after sentence completion depending on the offense and type of conviction.[4] That same person—possibly with limited education and access to career opportunities—will also be barred from employment or licensing in a wide variety of occupations—including, dockworker, real estate agent, and even bingo operator—and could be disqualified from receiving much-needed educational assistance.[5] New York is one of a number of states that have opted out of a federal rule banning drug felons from receiving federal cash assistance or food stamps for life.[6] Thus, unlike drug felons in other states—whose families can receive only a reduced amount of assistance or who face a temporary or conditional

ban on receiving any assistance—this person's family will at least be able to provide for some basic needs. However, the many adverse housing and employment consequences of conviction put into real question where this person will live and how this person will be able to support his or her family.

Despite the profound impact collateral consequences can have on individuals and families, these consequences—legally considered civil penalties—remain formally excluded from the criminal justice process, with no mechanism to address them.[7] For example, a formal discussion of collateral consequences does not typically occur during plea negotiation because as "indirect" ramifications of a guilty plea, neither the trial judge nor defense counsel is affirmatively required to inform defendants of the collateral consequences attached to a particular offense. As a result, they are largely invisible to convicted individuals and criminal justice practitioners alike.[8] Since collateral consequences are scattered throughout different statutes, cut across distinctive areas of law, and operate through diverse actors across several systems, it can be challenging for criminal attorneys, prosecu-

ARREST RECORDS

Arrests—including those that do not result in a conviction or a formal charge—can still trigger devastating collateral consequences. Records of an arrest that result in a not-guilty adjudication, dismissal, or no charge often remain in publically accessible criminal record databases.[a] Additionally, commercial "data harvesters" collect records immediately or shortly after an arrest is made, undermining state efforts to make inaccessible arrest records that did not result in a conviction.[b] Moreover, these arrest records often do not include information on how the case was ultimately adjudicated—that is, whether a case was ultimately dismissed, or that the individual was never charged.[c] Arrest records are used in employment, housing, credit, and other important decisions with very damaging consequences.[d] African Americans, with much higher arrest rates, are particularly affected by the collateral consequences of an arrest record.[e]

In October 2014, the *New York Times* presented the story of Anthony Welfare, whose case exemplifies the consequences that may arise from an arrest.[f] Welfare was arrested after a pipe containing marijuana residue was found in the console of the car in which he was a passenger. Welfare, who had no knowledge of the paraphernalia in the car, was not a marijuana user, and had no prior criminal record, was issued a desk appearance ticket and charged with a misdemeanor. Welfare worked for seven years as a school bus driver, but upon being notified of the arrest, his employer fired him. He was told he could be reinstated after he proved his innocence. Welfare waited two months for his first court date, losing nearly $7,000 in wages, and was granted a dismissal after an additional 90 days of staying out of trouble—resulting in an additional 90 days out of work. In a follow-up in November, the *Times* reported that while Welfare's charges have since been dismissed, he has still not been reinstated at his former job.[g]

[a] For information regarding the collateral effects of arrest records, see Shawn D. Stuckey, "Collateral Effects of Arrests in Minnesota," *University of St. Thomas Law Journal* 5, no. 1 (2008): 335; H. Lane Dennard, Jr. and Patrick C. DiCarlo, *Collateral Consequences of Arrests and Convictions: Policy and Law in Georgia* (Macon, GA: Mercer Law School, 2009); and Gary Fields and John R. Emshwiller, "As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime," *Wall Street Journal,* August 18, 2014.

[b] Stuckey, 2008, pp. 343-344.

[c] For example, the Georgia Crime Information Center, which is responsible for a statewide centralized database of criminal history records, has reported that 25 percent of felony arrest records reported during a five-year period did not also report corresponding final dispositions. See H. Lane Dennard, Jr. and Patrick C. DiCarlo, *Collateral Consequences of Arrests and Convictions: Policy and Law in Georgia* (Macon, GA: Mercer Law School, 2009), 16. The report also notes the significant time lapse—152 days on average—between when a disposition decision is rendered and when the database is updated to reflect the disposition. The national average is reported to be 50.2 days.

[d] Gary Fields and John R. Emshwiller, "As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime," *Wall Street Journal*, August 18, 2014.

[e] Stuckey, (2008), pp. 338-340.

[f] Jim Dwyer, "Despite Blasio's Promise, Marijuana Arrests Persist in New York," *The New York Times,* October 21, 2014.

[g] Jim Dwyer, "Shift on Marijuana Policy Was a Long Time Coming, and Too Late for One Man," *The New York Times,* November 13, 2014

tors, or judges to know and understand how and when they apply, or be familiar with how other actors in different systems will employ them.[9] Accordingly, many criminal justice actors remain unfamiliar with the full gamut of collateral consequences triggered by a specific offense.[10] Apart from immigration consequences, neither the trial judge, nor the prosecutor, nor the defense attorney is required to be aware that any exist.[11] Thus, in many cases, individuals complete their sentences and then find themselves burdened with unanticipated, long-lasting, and onerous post-punishment restrictions and penalties that can affect nearly every aspect of their lives and from which they may have little prospect of relief.

In recent years, however, the veil of invisibility has slowly lifted.[12] With rising awareness of the increasing number of people under correctional supervision and, therefore, an ever-increasing number reentering society, state policymakers, legal practitioners, advocates and the American public have become more concerned about the issue of offender reentry and more supportive of rehabilitative and reentry services, particularly those which prevent recidivism.[13] This concern has brought into sharp focus the impact of collateral consequences on the employment, education, health, and housing outcomes for people already disadvantaged in these areas , along with the harmful public safety repercussions that these can engender.[14] Reflecting this concern, Attorney General Eric Holder, for example, directed the U.S. Department of Justice in 2011 to consider whether any proposed rule, regulation, or guidance may present unnecessary barriers to successful reentry. In a speech in February 2014, Holder specifically called on states to mitigate or eliminate "unwise collateral consequences" that prevent individuals with past convictions from fully reintegrating into society.[15] Holder has also made a strong case against felon disenfranchisement laws, in particular, by characterizing them as "unnecessary," "unjust," and "counterproductive," and which "perpetuat[e] the stigma and isolation imposed on formerly incarcerated individuals, [and] increase the likelihood they will commit future crimes."[16]

As jurisdictions direct attention to the significant barriers that collateral consequences impose on successful reentry, they have enacted measures that allow certain individuals to move beyond their convictions in order to help increase their chances for successful lives in the community. This report summarizes the approaches states have taken since 2009. It also discusses the limitations of these approaches and offers recommendations to jurisdictions considering similar efforts.

Background

As the 1970's ended, with crime rates on the rise, the American public became more concerned about public disorder and public safety, and as a result politicians of all stripes responded by jettisoning the rehabilitative principals that had, until then, characterized much of the criminal justice system's approach towards law-breakers.[17] Narrowing the system's focus to retribution and deterrence, policymakers adopted harsher policies, including the dramatic expansion of the penal code, in which state legislatures and Congress expanded existing

VOTING RIGHTS

Disenfranchisement—revocation of the right to vote—for criminal offenders in the United States dates back more than two hundred years.[a] Premised on a principle that individuals who violate social norms by committing criminal offenses are not fit to participate in the democratic political process, disenfranchisement is a tool used to marginalize law-breakers in America.[b]

Disenfranchisement of convicted individuals as practiced in the United States is quite rare among democracies elsewhere in the world.[c] Besides running afoul of Article 25 of the International Covenant on Civil and Political Rights, disenfranchisement laws have been struck down in countries such as South Africa, Austria, the United Kingdom, and Canada.[d]

One particularly troubling aspect of this marginalization in the United States is its disparate racial impact.[e] In the late nineteenth century, disenfranchisement was broadened and focused on crimes disproportionately committed by African Americans, in an attempt to bypass the new voting rights granted by the Fifteenth Amendment.[f] Today, one out of every 13 African Americans (7.7 percent) is disenfranchised, compared to 1.8 percent of non-African Americans. At least 20 percent of African Americans have lost the right to vote in three separate states (Florida, Kentucky, Virginia).[g]

Today, disenfranchisement laws differ significantly state to state. Three states permanently disenfranchise all people with a felony conviction; seven states permanently disenfranchise some felony offenders; 21 states reinstate voting rights upon sentence completion; four states disenfranchise those in prison or on parole, but allow those on probation to vote; thirteen states disenfranchise those in prison but allow individuals or probation or parole to vote; and finally, just two states—Maine and Vermont—grant everyone the right to vote, even those who are incarcerated, or on community supervision.[h]

Although, the rate of voting rights loss has increased approximately 400 percent since 1980, in recent years, there has been a relaxation of voting bans in part due to research that suggests that the engagement of individuals with a criminal record in the political process leads to a decrease in subsequent criminal activity.[i] At least 23 states have expanded voter eligibility since 1997.[j] Most recently, **Delaware HB 10 (2013)** eliminated the five-year waiting period after sentence completion before voting rights restoration for most offenders. **New York SB 3553 (2014)** provided for absentee voting for incarcerated non-felons. Virginia issued a directive to automatically restore voting rights to nonviolent felons after sentence completion.[k] In 2010, South Dakota restored some voting rights as a result of a settlement in a court case brought by the ACLU.[l]

[a] See The Sentencing Project, *Felony Disenfranchisement: A Primer* (Washington, DC: The Sentencing Project, 2013), 2-3.

[b] For an overview of the premises that undergird arguments for felony disenfranchisement, see Roger Clegg, George T. Conway III, and Kenneth K. Lee, "The Case Against Felon Voting," *University of St. Thomas Journal of Law & Public Policy* 2, No.1 (2008): 17-19. Also see Matthew E. Feinberg, Esq., "Suffering Without Suffrage: Why Felon Disenfranchisement Constitutes Vote Denial Under Section Two for the Voting Rights Act," *Hastings Race and Poverty Law Journal* 8 no. 61 (2011); 65-66. For a discussion of the marginalizing effects of criminal disenfranchisement, see Ann Cammett, "Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt," *Penn State Law Review* 117, no. 349 (2012): 370-72.

[c] See ACLU et al., *Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States* (Shadow Report Submitted to the United Nations Human Rights Committee, 2013) 3-4, http://sentencingproject.org/doc/publications/fd_ICCPR%20Felony%20Disenfranchisement%20Shadow%20Report.pdf

[d] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: http://www.refworld.org/docid/3ae6b3aa0.html. See note c for more information on other nations' rejections of criminal disenfranchisement laws.

[e] See United States Constitution, Amendment 15, Section 1 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude"). For a comprehensive overview of the historical and present disparate impact of felony disenfranchisement laws, see Daniel S. Goldman, "The Modern-Day Literacy Test?: Felon Disenfranchisement and Race Discrimination," *Stanford Law Review* 57, no. 611 (2004); 625-40.

[f] Ibid., p. 625-27.

[g] See note c, at p. 2.

[h] ACLU, "Map of State Criminal Disenfranchisement Laws," available at https://www.aclu.org/maps/map-state-criminal-disfranchisement-laws

[i] For information regarding the change in the disenfranchisement rate, see Christopher Uggen, Sarah Shannon, and Jeff Manza, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010* (Washington, DC: The Sentencing Project, 2012), 9. For information regarding research on criminal activity and engagement in the political process, see Reuven Ziegler, "Legal Outlier, Again? U.S. Felon Suffrage: Comparative and International Human Rights Perspectives," *Boston University International Law Journal* 29 (2011): 208.

[j] For a list of states that have expanded voter eligibility and descriptions of these reforms, see Nicole D. Porter, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2010* (Washington, DC: The Sentencing Project, 2010).

[k] See Letter from Governor Robert F. McDonnell to Secretary of the Commonwealth Janet V. Kelly, May 29, 2013, available at https://commonwealth.virginia.gov/media/2107/20130529124204967.pdf.

[l] See Settlement Agreement, Janis v. Nelson, Civ. 09-5019 (D.S.D. 2010) available at: https://www.aclu.org/files/assets/2010-5-25-JanisvNelson-SettlementAgmt.pdf. See also Nicole D. Porter, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2010* (Washington, DC: The Sentencing Project, 2010), 23.

criminal statutes or churned out new ones; the adoption of zero-tolerance policing tactics—focusing on the zealous enforcement of minor street-level drug and quality-of-life offenses—and the roll out of stiffer penalties, exemplified by the proliferation of new statutes aimed at keeping people sentenced to prison in there for longer periods of time (e.g., mandatory minimum sentences, truth-in-sentencing statutes, and habitual offender laws).[18] With more conduct subject to criminal regulation, coupled with increased enforcement measures, ever-more people found themselves ensnared in the criminal justice system. In 2012, an estimated 70.3 million adults in the U.S. had a criminal record. The number of individuals under correctional supervision rose from 2,869,836 in 1985 to nearly 7 million people in 2012, 2.2 million of whom were incarcerated in jail or prison .[19] A recent study indicates that approximately one in three adults have been arrested by age 23; and the Federal Bureau of Investigation estimates that law enforcement has made more than one-quarter billion arrests in the past twenty years.[20]

During this same time, policymakers also sought to widen the system's punitive reach beyond the boundaries of formal criminal sanctions.[21] Coinciding with the growing severity of criminal penalties was the expansion, both in number and scope, of a vast network of post-punishment penalties and restrictions (or "collateral consequences") aimed at excluding individuals with criminal histories from many aspects of mainstream life.[22] While many of these consequences were rationalized as steps to protect the public, they also aimed to attach further opprobrium by enacting a system that would continue to stigmatize and marginalize individuals—with a criminal record well beyond their sentences.[23] What has resulted is a system to delineate a person's status as either a law-abiding member of the community at large or as one of those who must forever sit outside it.[24]

THE SCOPE OF COLLATERAL CONSEQUENCES

The collateral consequences enacted over recent decades are wide-reaching, long-lasting, and encompass two distinct types of sanctions: legal penalties that are imposed automatically by operation of law upon conviction and disqualifications that an administrative agency, civil court, or official are authorized but not required to impose on a convicted person.[25] These include temporary or permanent loss of certain civil rights (such as the right to vote, serve on a jury, or hold public office); temporary or permanent ineligibility for social benefits, such as public housing, food stamps, or rights to pensions, disability, veteran's benefits or federally-funded student aid; employment or occupational licensing restrictions; restrictions on certain aspects of family life (such as the ability to adopt or retain custody of one's own children); and for non-citizens, deportation.[26]

All of this does not account for the many difficult-to-regulate *informal* disqualifications imposed by private actors (i.e., landlords, employers, university admission officers) which stem not from the express operation of the law, but from the social stigma suffered by individuals with a criminal record.[27] Indeed,

a criminal record—even a mere arrest record— can cast a long shadow on individuals and their families and still serve as a *de facto* basis for job, credit, or housing denial even absent formal disqualification —a situation made particularly worse by the fact that public access to criminal records are now more readily available in the internet era.[28]

RESPONDING TO THE PRISONER REENTRY CRISIS

With services like in-custody therapeutic, vocational, and educational programs removed from corrections budgets and community supervision more focused on surveillance than rehabilitation, few of the more than 637,000 men and women released from state and federal prisons, the nearly 2.6 million released from community supervision, and the more than 11 million released from jail in 2012 were left with any assistance to deal with the problems that got them involved in the criminal justice system in the first place—such as mental illness, substance abuse, or lack of vocational skills or education.[29] These issues, when left unaddressed, increase the risk of recidivism, and many of these people are returning to communities lacking the resources or services necessary to cope with these pressing needs.[30] Indeed, these communities are often poor, urban, minority neighborhoods marked by endemic poverty and unemployment, family dislocation, high residential turnover, and a breakdown of community social processes and controls.[31]

In response to stubbornly high recidivism rates and with a growing acknowledgment that certain collateral consequences (particularly those impacting employment, housing, and health) prevent people with criminal records from appropriately addressing proven risk factors for reoffending, government agencies and community-based service providers are directing more resources and efforts towards assisting individuals and their families in navigating the reentry process.[32] Public defender organizations are adopting integrated criminal and civil defense strategies designed, in the words of the Bronx Defender's Civil Practice mission statement to "minimize the severe and often unforeseen fallout from criminal proceedings and [to] facilitate the reentry of [clients] into the community."[33] Corrections departments, too, are making changes—implementing programs and practices that tie programming to post-release risks and needs, including services that help prisoners nearing release to connect with much-needed housing, treatment, or other services and resources in the community.[34]

Policymakers are also addressing the impact and scope of post-punishment penalties. For one, to better understand their reach, educate defendants and system actors, and identify ways to narrow their range, many states and the American Bar Association have begun to inventory the vast array of collateral consequences at the federal, state, and local level.[35] There are approximately 45,000 laws and rules that restrict the opportunities and benefits available to individuals with criminal histories.[36] As these sanctions and disabilities have come to light, in part through this process, states are passing legislation aimed at easing their burden for individuals, their families, and communities.

CLEMENCY

Though a person's conviction and sentence are final, the president, a state governor, or a special state board can grant clemency to ameliorate the harsh effects of a criminal conviction.[a] There are two forms of clemency—pardon and commutation—which operate in distinct ways. A commutation is a reduction in the length of a sentence and is used to correct an overly harsh sentencing decision. A pardon, on the other hand, relieves the offender of the collateral consequences of a conviction and may, in some states, forgive the conviction altogether.[b]

In the federal system, presidential pardon power is granted by the Constitution, and presidents are free to determine the parameters of how to exercise it. According to rules set by the current Office of the Pardon Attorney at the U.S. Department of Justice, the president may issue a commutation to shorten a person's sentence at any time after conviction.[c] President Obama has recently announced his intention to commute the sentences of hundreds of nonviolent drug offenders who were sentenced under federal mandatory minimums. The current policies of the Obama administration dictate that a pardon can only be granted five years after sentence completion. A federal pardon relieves collateral consequences but does not erase or expunge the conviction.

On the state level, governors or pardon boards may grant clemency to persons convicted under the laws of their respective states.[d] State offenders may also have their sentences reduced or their convictions nullified. State rules and definitions vary from the federal system and from one another.

On the federal and state levels, grants of clemency have declined dramatically in recent decades.[e] Originally intended as an important check on injustice and a safety valve for individuals subjected to unduly harsh sentences, today the pardon power has largely fallen victim to political expediency.[f]

Some states, however, are issuing an increasing number of pardons and commutations. Illinois' former Governor Pat Quinn granted more than 1,100 clemency petitions since taking office, and outgoing Texas Governor Rick Perry has granted hundreds of commutations and pardons.

In the last five years, four states have passed laws strengthening the pardon relief available to convicted individuals. **Colorado SB 123 (2013)** clarifies that a pardon from the governor waives all collateral consequences of the conviction. **Utah HB 33 (2013)** expands the impact of a pardon so that it exempts the person from punishment as well as restores any rights or privileges that were forfeited due to the criminal conviction. **Louisiana HB 8 (2014)** reduces the length of time that certain applicants who have been denied pardon are required to wait before filing a subsequent application with the Board of Pardons. **Washington HB 1793 (2011)** provides that the criminal records of juveniles who have been pardoned shall be sealed and the proceedings will be treated as having never occurred.

[a] Clemency is justified on the grounds that it is important for merciful or humanitarian grounds, that is can ensure justice in instances where the system cannot ensure a just result (such as cases of doubts of guilt), or when it is seen as serving public welfare aims. See Molly Clayton, "Forgiving the Unforgivable: Reinvigorating the Use of Executive Clemency in Capital Cases," 54 B.C. L. Rev. 751, 756-759 (2013).
[b] For example, in Minnesota, the Board of Pardons can grant a "pardon extraordinary," which nullifies the conviction and cleanses the associated criminal record. See M.S.A. § 638.02 (2).
[c] Code of Federal Regulations, Title 21, Chapter 1, Part 1, Section 1.3. President Clinton exercised these powers differently and pardoned wealthy fugitives Marc Rich and Pincus Green after their indictments but before their trials began.
[d] Nine states have Boards of Pardons and Paroles that exclusively grant all pardons and commutations.
[e] Margaret Colgate Love, "The Twilight of the Pardon Power," Journal of Criminal Law & Criminology 100, no. 3 (2010): 1170-1, 1193-1204.
[f] For a discussion on the pardon power's original functions and how the pardon power has fallen victim to political pressure, see Paul Rosenzweig, "Reflections on the Atrophying of the Pardon Power," The Journal of Criminal Law and Criminology 102(3): 595-602, 607-8 (2012).

New approaches to collateral consequences

All told, 41 states and the District of Columbia enacted 155 pieces of legislation between 2009 and 2014 to mitigate the burden of collateral consequences for individuals with certain criminal convictions. (Comprehensive listings of the state-level legislation passed since 2009 can be found in the appendices.) States have pursued seven broad approaches to achieve this goal. They have:

- **Created or expanded expungement and sealing remedies.** To shield eligible individuals from the adverse impact of a criminal conviction record, many states created new or expanded existing remedies aimed at sealing or expunging criminal records.
- **Issued certificates of recovery.** To assist qualified individuals in moving beyond their criminal records, some states issue certificates of recovery to people who have met certain rehabilitative standards. These certificates are meant to help third parties, such as employers and landlords, make better-informed decisions about individuals with criminal records.
- **Allowed for offense downgrades.** States have also adopted laws that offer an offense downgrade (for example, from a felony to a misdemeanor conviction) to eligible individuals who comply with conditions of supervision. These laws ensure that compliant individuals avoid certain collateral consequences that attach to felony convictions.
- **Built relief into the criminal justice process.** To minimize certain individuals' contact with the criminal justice system, some states sought to build a relief mechanism—such as deferred prosecution or adjudication programs—into the front end of the criminal justice system instead of trying to control collateral consequences later in the process.
- **Ameliorated employment-related collateral consequences.** Many states enacted laws to ease specific collateral consequences pertaining to employment, by, for example, instituting "ban the box" policies—which prohibit inquiries into a prospective employee's criminal history upon initial application—or removing licensing restrictions.
- **Improved access to information.** States also enacted laws that aim to provide convicted individuals—many of whom remain ignorant of both the impacts of their criminal record and relief for which they may be eligible—better access to pertinent information related to collateral consequences. Some of these laws also sought to better regulate how third parties use criminal history information by requiring them to institute more transparent policies and procedures in order to increase procedural fairness.
- **Mitigated specific collateral consequences.** Many states passed laws that address specific collateral consequences, such as restrictions on housing or public benefits, or those that related to certain family matters, such as adoption or child support.

MAPPING RELIEF: COLLATERAL CONSEQUENCES REFORM, 2009-2014

Expungement or Sealing Remedies

Alabama
Arkansas
California
Colorado
Delaware
District of Columbia
Georgia
Hawaii
Illinois
Indiana
Iowa
Louisiana
Maryland
Massachussetts
Minnesota
Mississippi
Missouri
Nevada
New Hampshire
New Jersey
New York
North Carolina
Ohio
Oklahoma
Oregon
South Carolina
South Dakota
Tennessee
Texas
Utah
Washington
Wyoming

Ameliorating Employment-Related Collateral Consequences

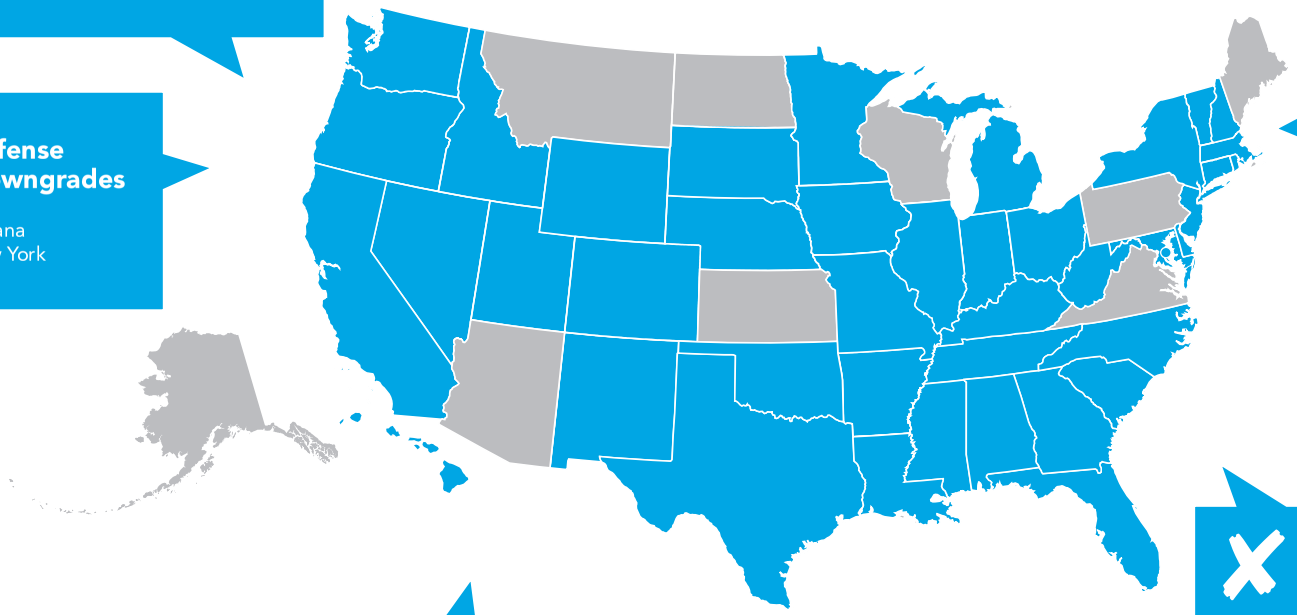
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Illinois
Indiana
Louisiana
Maryland
Massachussetts
Minnesota
Nebraska
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Ohio
Rhode Island
Tennessee
Texas

Certificates of Recovery

Arkansas
Connecticut
District of Columbia
Georgia
Illinois
North Carolina
Ohio
Rhode island
Tennessee
Vermont

Offense Downgrades

California
Colorado
Idaho
Indiana
New York



Building Relief into the Criminal Justice Process

Alabama
Arkansas
California
Colorado
Delaware
Georgia
Illinois
Kentuky
Louisiana
Michigan
Minnesota
Missouri
New Jersey
New York
Oregon
Rhode Island

Discrete Collateral Consequences

Arkansas
California
Colorado
Delaware
Georgia
Illinois
Indiana
Louisiana
Missouri
Nevada
New Hampshire
New Jersey
New York
North Carolina
Ohio
South Dakota
Utah
Washington
West Virginia

Access to Information

Arkansas
California
Colorado
District of Columbia
Florida
Georgia
Hawaii
Illinois
Indiana
Louisiana
Massachussetts
Minnesota
Missouri
Nevada
New Hampshire
New Jersey
New York
Ohio
South Carolina
Texas
Utah
Vermont
Washington
Wyoming

EXPUNGEMENT AND SEALING REMEDIES

Recent advances in information technology—together with the growth in the number of criminal records databases at the federal, state, and local levels—has made it increasingly easy to find a person's criminal history online.[37] Moreover, the pervasiveness of criminal background checks mean that past criminal history, including youthful indiscretions, can have negative consequences throughout a person's life.[38] Indeed, with thousands of state and federal laws mandating FBI background checks for a broad spectrum of occupations, many individuals with a criminal history can be excluded from a number of professions simply because they possess a conviction record. In 2012, approximately 17 million background checks using the FBI database were conducted for employment or licensing purposes.[39]

Cleansing a criminal record can be a useful tool to shield individuals from the continuing negative effects of a conviction. Typically, the criminal record is destroyed or made inaccessible to the public. From 2009 to 2014, at least 31 states and the District of Columbia have taken steps to broaden the scope and impact of expungement and sealing remedies. These states have primarily focused on (1) extending eligibility for expungement or sealing mechanisms to additional classes of offenses or offenders; (2) reducing the requisite waiting periods before an offender may apply for expungement or sealing , as well as making sealing or expungement automatic or presumptive following successful completion of sentence or other programs; (3) clarifying the effect of expungement or sealing; (4) providing remedies for sealing or expunging juvenile records; and (5) making it easier for individuals to prevail on an expungement request by altering the burden of proof.

Extending eligibility for expungement and sealing

At least 23 states and the District of Columbia have enacted 37 laws that increase the scope of expungement and sealing remedies. Some accomplished this by extending these remedies to those with prior convictions (as distinct from first-time offenders) or who received certain types of sentences. Other states kept their expungement and sealing remedies available only to those with limited criminal histories, but changed the way "limited criminal history" is calculated. Additionally, some states extended expungement and sealing remedies of arrest or trial records to individuals whose charges were dropped, who were found innocent, or who otherwise avoided conviction.[40] In some states, mechanisms were added which made expungement or sealing remedies automatically or presumptively available. Five of those states are:

> **Mississippi HB 160 (2010)** expands expungement eligibility to certain first-time felony offenders, such as those convicted of drug possession, shoplifting, writing bad checks, and certain larceny, false pretenses, and malicious mischief offenses. After a waiting period of five years, a judge has discretion to grant a petition for expungement based on whether the individual is rehabilitated. If granted, the conviction is removed from all public records.

Previously, expungement was only available for first-time misdemeanor offenders.

- **California AB 1384 (2011)** expands eligibility for expungement to those convicted of a misdemeanor and sentenced to incarceration. These individuals are now treated the same as those sentenced to probation for a misdemeanor conviction and are immediately eligible for expungement at the court's discretion. Previously, individuals incarcerated for misdemeanor convictions could seek expungement only after completing their sentence and remaining crime-free for one year.
- **Wyoming SF 88 (2011)** expands eligibility for expungement to those convicted of certain first-time nonviolent felonies. Previously, expungement was available only for certain first-time misdemeanor convictions.
- **Ohio SB 337 (2012)** expands eligibility for record sealing to those with certain prior convictions. Previously, only first-time offenders could petition to have their records sealed. Now, individuals with the following types of prior convictions may petition for record sealing: (1) one felony conviction, (2) two misdemeanor convictions if they are not for the same offense, or (3) one felony conviction and one misdemeanor conviction. Convictions for offenses involving child victims remain ineligible, except those for failure to pay child support.
- **Illinois HB 3061 (2013)** expands eligibility for record sealing to 10 additional Class 3 and 4 felonies. Previously, the only felony offenses eligible for record sealing were Class 4 felony drug possession and Class 4 felony prostitution. In deciding whether to seal records, judges may consider specific collateral consequences the individual is facing, the person's age and employment history, and the strength of the evidence supporting the conviction.

Reducing waiting periods

States typically institute a waiting period following the completion of the individual's sentence (including any time spent on probation or parole) before an individual may apply to seal or expunge his or her criminal record. The rationale for the waiting period is to allow those with a criminal conviction to demonstrate that it was an aberration in an otherwise law-abiding life. When individuals remain crime-free during the specified period, they are then rewarded with the opportunity to seal or expunge their criminal records. If not crime-free, sealing or expungement remedies will be unavailable, as a matter of public safety.

Many states have recognized that overly long waiting periods place a burden on those simply trying to move on with their lives.[41] From 2009-2014, eight states and the District of Columbia enacted at least 11 laws that eliminated, lowered, or changed the calculation for the waiting period before certain offenders are eligible for expungement or sealing, including:

- **Delaware HB 169 (2010)** eliminates the waiting period before certain first-time offenders are eligible to obtain expungement of arrest and conviction records. The waiting period was previously five years for those who completed a deferred judgment program, and two years for those who completed a drug court diversion program. Now, individuals who complete either of these programs are eligible for expungement immediately upon completion.
- **Colorado HB 1167 (2011)** reduces the waiting period for infractions, misdemeanors, and low-level felonies involving drug use or possession from 10 years from the conviction date or completion of sentence, whichever occurred later, to three to seven years. Additionally, the law places increasing limits on the influence of district attorneys in the expungement process as the seriousness of the offense drops. For example, petty offenses must be expunged with no notice given to the district attorney; for low-level felonies, district attorneys must be given notice and the opportunity to object.
- **Indiana HB 1155 (2014)** changes the way that waiting periods for most felonies are calculated. Previously, the waiting period began at completion of sentence, and was eight years for nonviolent felonies and 10 years for felonies involving bodily injury. Now, the waiting period is eight or 10 years from the date of conviction or three or five years from completion of sentence, respectively, whichever occurs later. For example, under the previous law an individual convicted of a violent injury and sentenced to 10 years of incarceration would complete his or her waiting period ten years after release, which is 20 years from the date of conviction. Under the new law, this individual's waiting period would instead finish five years after release from incarceration, which is 15 years from conviction.

Clarifying the effect of expungement and sealing

Even when a state has an expungement or sealing remedy in place, its legal effect can remain unclear or ambiguous to individuals with criminal histories. For example, individuals may be unaware of a right to deny the existence of a sealed or expunged record on a job application; others who are aware of the right may not exercise it out of fear of discriminatory treatment by employers who may later learn of their sealed or expunged criminal record.[42]

From 2009 to 2014, eight states enacted at least 13 laws to clarify and make explicit the effects that sealing or expunging a criminal record has, particularly with regard to specific collateral consequences and available relief mechanisms. Some of these laws resolve ambiguity about the status of arrest and trial records after a conviction or acquittal record is sealed or expunged. Others specify that a person whose records are sealed or expunged may state without committing perjury that the records do not exist and the activity in the records never occurred. Still other laws clarify the restoration of certain civil rights that accompany the sealing or expungement of records, while others impose liability for unlawful discrimination on those who make adverse employment

or licensing decisions on the basis of sealed or expunged criminal records. Three of those states are:

- **South Dakota HB 1105 (2010)** clarifies an already existing expungement remedy for individuals who were arrested, but not found guilty. If the petition to expunge is granted, *all* official records shall be sealed, including those related to arrest, detention, indictment, trial, and disposition. Following expungement, individuals do not have to acknowledge or provide information contained in the records for any reason.
- **California AB 2371 (2012)** clarifies that a dismissal in a specialized veterans court program releases the defendant of the penalties and disabilities which usually result from the underlying offense. For example, a person whose records are sealed as a result of involvement in a veterans court program may indicate that the records do not exist and is not required to acknowledge the proceeding, even under oath, except on an application for a law enforcement position.
- **Indiana HB 1482 (2013)** makes it unlawful to expel, suspend, or refuse to employ or grant a license on the basis of an expunged conviction or arrest record. The law specifies that an employer may only ask if an applicant has any convictions or arrests that have not been expunged. Finally, the new law makes clear that a person's civil rights are restored after expungement, including the rights to vote, hold public office, serve as a juror, and own a firearm.

Expanding access to expungement and sealing of juvenile records

Prompted by research indicating that juvenile brain chemistry is distinct from that of adults, criminal justice actors and policymakers are beginning to acknowledge that juveniles may be less culpable than adults and that it may be inappropriate for long-lasting collateral consequences to attach to crimes committed by juveniles.[43] Accordingly, states are introducing procedures to seal or expunge juvenile convictions, often making these remedies available to individuals well into adulthood.

All told, 11 states have enacted at least 14 laws that increase access or eliminate barriers to expungement or sealing of juvenile records, including:

- **North Carolina SB 397 (2011)** introduces expungement of juvenile records for nonviolent felonies committed by first-time offenders under age 18. The ex-offender must wait four years, have no other felony or misdemeanor convictions (except for traffic violations), perform a minimum of 100 hours of community service and complete high school or earn a GED. The petition for expungement must also include affidavits of good moral character. If the court grants the expungement petition, the individual is not required to acknowledge the criminal records on any application, except for certain state certifications.[44]
- **Maryland HB 708 (2012)** expands eligibility for mandatory expungement

of juvenile records. Previously, the court was required to grant only those petitions that were handled exclusively in the juvenile court. Now, records of cases that were handled in adult court but transferred to juvenile court for sentencing are also eligible for mandatory expungement upon petition.

> **Ohio SB 337 (2012)** provides that juvenile records for sexual battery and gross sexual imposition may be expunged. Ineligible offenses are now limited to aggravated murder, murder, and rape. The law also specifies that a fee is no longer required to file a juvenile expungement petition, and reduces the waiting period from two years to six months. Additionally, SB 337 now excludes most juvenile records from criminal records background checks. Exceptions are records involving aggravated murder, murder, or a serious sex offense requiring registration

Altering the burden of proof

When a state allows for expungement or sealing of certain criminal records, an individual is generally required to file a petition in court requesting expungement or sealing. The petition must typically demonstrate that any applicable requirements have been met, including a requisite degree of rehabilitation. For example, an ex-offender may be required to establish that he or she is leading a law-abiding life, has no subsequent arrests or convictions, is not abusing any substances, and is gainfully employed. However, given the vast array of employment-related collateral consequences, for example, simply possessing a criminal record may prevent many individuals from achieving certain milestones necessary to succeed in their petition.

To counteract this, at least three states have altered the burden of proof required to seal or expunge criminal records, either by lowering the burden of proof or reversing it altogether. For instance, instead of requiring individuals to show that they are fit for expungement or sealing, states are passing laws that make expungement or sealing automatic unless the prosecutor shows that an offender is *not* fit for expungement or sealing. Alternatively, states are lowering the level of proof required from "clear and convincing evidence" to "a balance of probabilities" to demonstrate fitness for sealing or expungement.[45] Two of those states are:

> **Arkansas HB 1608 (2011)** introduces presumptive expunction of misdemeanor offenses for eligible individuals. The law calls for all misdemeanor expungement petitions to be approved unless the court is presented with clear and convincing evidence that a misdemeanor conviction should not be expunged. Misdemeanor convictions for some offenses—such as third-degree battery, fourth-degree sexual assault, and indecent exposure—are subject to a five-year waiting period.

> **Indiana HB 1155 (2014)** lowers the burden of proof required in petitions to expunge all levels of offenses from "clear and convincing evidence" to a "preponderance of the evidence." Accordingly, a person now only has to show that it is more likely than not that he or she has no pending charges,

no subsequent convictions within the relevant time frame, let the requisite waiting period pass, paid all fees and restitution, and, in some cases, obtained the prosecutor's consent.

CLEANSING A CRIMINAL RECORD

Terminology can be confusing when discussing state remedies to "cleanse" an individual of a criminal record. Some states, such as New York, have remedies which authorize certain adult criminal records to be "sealed" from the public record, while others, such as Utah, use the term "expunge." Some states, such as Indiana, use the terms "expunge" and "seal" interchangeably, and others use slightly different terms such as "expunction." This leads to confusion, since for instance "sealing" and "expunging" a criminal record often have distinct meanings.[a]

The effect of an expungement or sealing order varies widely from state to state. Generally, when a criminal record is *sealed*, the public cannot access the record and individuals with a sealed record are usually permitted to deny the record's existence or the events that led to the criminal record. For example, potential employers conducting a background check will not be able to "see" a sealed criminal record and a person may be able to legally answer "no" if asked on a job application whether he or she was ever arrested, charged, or convicted of a criminal offense. Still, a sealed criminal record will physically exist and some entities—such as law enforcement agencies or courts—may be able to uncover its contents, particularly in a subsequent criminal proceeding; however this is usually only possible through a court order made for the public interest. In addition, some states require that sealed convictions be reported in connection with certain job or license applications (for example, a job application as a weapons-carrying law enforcement officer). On the other hand, the *expungement* of a criminal record, while similar to sealing, goes further in that it wipes the slate clean: a criminal record is typically removed or destroyed, and is not available for anyone to access, even by court order.

[a] In fact, other jurisdictions may also use entirely different terms, such as "annulling" or "vacating" a conviction which may or may not have a similar legal effect as expungement or sealing.

CERTIFICATES OF RECOVERY

Certificates of recovery—sometimes called certificates of reentry, relief, achievement or employability—are awarded to individuals who meet certain criteria or otherwise show that they can be productive members of society. These certificates help third parties, such as prospective landlords and employers, make more informed decisions about applicants with criminal records. While the cer-

tificates do not expunge or clear a person's record, they do act as evidence that the individual is rehabilitated and can shield against the imposition of some collateral consequences. Often, holding a certificate means that an employer must assume the certificate holder is suitable for employment and, in the absence of countervailing evidence, may not choose to withhold employment solely on the basis of a conviction. From 2009 through 2014, at least 9 states and the District of Columbia began issuing such certificates including:

- **North Carolina HB 641 (2011)** allows persons with no prior record who are convicted of up to two low-level felonies or misdemeanors in the same court session to petition the court for a Certificate of Relief. The certificate relieves the individual from most collateral sanctions (penalties affirmatively imposed) flowing from the state but excludes those such as prohibitions on firearm possession, driver's license revocations and suspensions, and sex offender registration. The certificate does not automatically relieve the individual of collateral disqualifications (i.e., the denial of access on the basis of a criminal conviction to certain activities or privileges, such as public employment or a professional license), but an administrative agency may view the certificate favorably when deciding on a disqualification due to conviction. A judge may grant a certificate if an eligible individual has complied with the terms of the sentence and at least 12 months have passed since completing the sentence, has no pending criminal charges, is employed, or is undertaking efforts to become employed, such as participating in an educational program, and granting the certificate would not pose an unreasonable risk to public safety. If a judge denies the Certificate of Relief, the individual may reapply after 12 months. The certificate may be revoked upon any subsequent felony or misdemeanor conviction, other than a traffic violation.
- **Ohio HB 86 (2011)** creates a Certificate of Achievement and Employability aimed at relieving collateral consequences that effect job eligibility in a field for which the offender trained while incarcerated. An offender can apply to the Department of Rehabilitation and Correction for the certificate up to one year prior to release rather than applying to the court post-release. To obtain a certificate, an offender must complete at least one vocational program, at least one cognitive or behavioral program, and community service hours. The certificate testifies that the individual is fit and directs an employer or licensing authority to give individualized consideration to the certificate holder unless the employer or licensing authority has information that proves otherwise. The certificate will be revoked upon any subsequent conviction other than for a minor misdemeanor, but cannot be revoked for a violation of a condition of release unless the violation is itself a criminal offense.
- **Illinois HB 5771 (2012)** expands eligibility to receive a Certificate for Relief from Disabilities. This law lifts the limit on felony convictions so that individuals with more than two prior felonies are now eligible. Individuals are

ineligible for the certificate if any of their convictions require registration as a sex offender, arsonist, or a murderer or violent offender against youth. Those convicted of a Class X felony, any forcible felony, or driving under the influence of alcohol or drugs are also ineligible.

- **Ohio SB 337 (2012)** creates a Certificate of Qualification for Employment (CQE). Whereas the certificate created by a previous law, HB 86 (2011), relieved employment and licensing-related collateral consequences for vocational training completed in prison, the CQE applies to a much broader array of employment and licensing sanctions. Granted by the court, the CQE relieves the certificate holder from the automatic ban on certain employment and licensing opportunities, such as construction and security guard licenses, and entitles him or her to individualized consideration.
- **Rhode Island SB 358 (2013)** empowers the parole board to grant Certificates of Recovery and Reentry to individuals who have met specified standards (to be determined by the parole board). An individual convicted of a crime of violence or who has a prior felony conviction is not eligible to receive a certificate.

OFFENSE DOWNGRADES

As the advantages of a clean or diminished criminal record become clear, some states are introducing mechanisms through which felony records may be reduced to misdemeanor records. This will minimize exposure to collateral consequences that specifically attach to felonies and provide eligible individuals with an opportunity to escape the stigma of a felony conviction.[46] At least five states have enacted laws of this type to encourage individuals with felony convictions to comply with conditions of supervision and lead law-abiding lives after serving their sentences.[47] In at least some of these states, the resulting misdemeanor records would be eligible for sealing or expungement. Three of those states are:

- **Indiana HB 1033 (2012)** allows a sentencing court to convert a Class D felony to Class A misdemeanor. The court must notify the prosecutor and hold a hearing finding that the individual is a nonviolent, non-sex offender convicted of an offense that did not result in bodily injury. Additionally, the person must wait three years from sentence completion and have no subsequent convictions or pending charges. Individuals whose convictions involved perjury or official misconduct are not eligible. In the event an individual is convicted of another felony within five years of the conversion, the prosecutor may file a motion to convert the misdemeanor back to a felony.
- **Colorado SB 250 (2013)** requires that a felony conviction for certain low-level drug offenses (particularly possession) be vacated in favor of a misdemeanor conviction if an offender successfully completes probation or another community-based sentence. The measure is designed as an incentive for individuals to remain compliant and to reduce the negative consequences of a felony conviction. The provision does not apply to persons who

have previously been convicted of two or more felony drug crimes or any crime of violence.

- **Idaho S 1151 (2013)** provides a mechanism by which a felony conviction may be downgraded to a misdemeanor after successful completion of probation. A prosecutor's consent is required if fewer than five years have passed after sentence completion and is always required if the felony was a serious offense, such as robbery, kidnapping, and certain offenses involving assault. A petition to downgrade may be granted if the individual has no intervening felony convictions, no pending charges, and the downgrade is in the public interest.

BUILDING RELIEF INTO THE CRIMINAL JUSTICE PROCESS

Rather than passing laws to minimize exposure to collateral consequences after conviction and sentence, at least 16 states have built relief mechanisms into the criminal justice process , often at the front-end, to minimize the extent of an individual's contact with the criminal justice system.[48] Some states accomplished this by creating or expanding deferred prosecution programs through which a defendant is charged with a crime but not prosecuted. If the defendant successfully completes a treatment or other program, or stays out of trouble for a specified period of time, the charges are dismissed and in certain instances, arrest and charging records are sealed as well. Other states created or expanded deferred adjudication programs in which a defendant is charged, prosecuted, and found guilty, but a conviction (sometimes called an order of judgment) is never entered. Similar to deferred prosecution, eligible defendants are given an opportunity to complete a treatment or other program, and stay out of trouble for a specified probationary period. If successful, the guilty verdict is vacated and the case dismissed; upon failure, the order of judgment is entered and the individual proceeds to formal sentencing. Many of the relief mechanisms enacted include provisions which make sealing or expungement automatic or presumptive following the completion of the program, eliminating the need for individuals to submit a future petition after an applicable waiting period has passed. Additionally, at least one state has instituted mechanisms which allow a judge to order relief from collateral consequences during sentencing. Five of those states are:

- **Arkansas HB 1608 (2011)** makes mandatory a previously discretionary deferred judgment program for first-time felony and misdemeanor drug offenders of non-schedule I substances. Now all eligible defendants *must* have their judgments deferred and be placed on probation for at least one year. Upon completion of probation, the charges are dismissed and misdemeanor records are mandatorily sealed.
- **Illinois SB 3349 (2012)** creates a deferred prosecution program for first-time nonviolent felony property or drug possession defendants whose offenses do not require a mandatory sentence of incarceration. Known as the Offender Initiative Program, prosecution of eligible defendants is suspended for at least 12 months, during which time defendants must remain

crime-free, avoid all firearms, make full restitution to any victim, obtain employment or perform 30 hours of community service, and work towards obtaining a GED. The court also has the discretion to impose additional terms, including medical or psychiatric treatment or periodic drug testing. After fulfilling program terms, the charges and proceedings against the defendant are dismissed.

> **Michigan HB 5162 (2012)** establishes a deferred judgment veterans treatment court program, in which defendants are required to plead guilty and enter a probation program. Upon successful completion, charges are dismissed and the individual is discharged. Although records are closed from public inspection and disclosure, they remain available to courts and law enforcement agencies.

> **Colorado HB 1156 (2013)** standardizes the state's locally-run diversion programs and conditions state funding on each program's compliance with certain enumerated criteria. According to the new standards, a district attorney maintains broad discretion in determining eligibility and terms of a diversion program. In general, he or she may suspend prosecution for up to two years while a defendant completes a probation or treatment program. Upon completion, charges are dismissed and defendants are restored to their pre-arrest status, permitting them to deny the charges or proceedings against them. After completing diversion, defendants may ask for their records to be sealed and, in most cases, judges must do so upon request.

> **Colorado SB 123 (2013)** creates a procedure in which a judge may issue an order of collateral relief at the time a person is sentenced to community-based supervision, which can relieve the individual of certain collateral consequences, such as barriers to housing and employment. An individual may not obtain this order if the offense was a crime of violence, led to the permanent disability of the victim, or requires registration as a sex offender.

> **Minnesota HF 2576 (2014)** provides that individuals who have completed a deferred adjudication or other diversion program may have the related arrest, indictment, trial, or other records sealed after remaining crime-free for a one year waiting period. Previously, records of arrest and prosecution could only be sealed if the case ended in an acquittal.

AMELIORATING EMPLOYMENT-RELATED COLLATERAL CONSEQUENCES

Employment is critical to reducing recidivism and ensuring successful reentry for individuals with criminal convictions.[49] However, criminal records can function as a "negative curriculum vitae."[50] Because criminal records are readily available online, they can serve as a basis for employment discrimination by potential employers. This burden is exponentially exacerbated by the complex web of formal employment-related barriers triggered by operation of the law and which flow from a criminal conviction.[51] For example, laws mandate that background checks be conducted on the following classes of prospective employees: those who will have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities; port workers; people who volunteer with certain youth-focused organizations; people who work in public or private schools; those who will work in the financial industry, including mortgage processing; people in nursing or caregiving positions; and workers licensed to handle hazardous materials, among others.[52]

From 2009 to 2014, at least 22 states and the District of Columbia enacted laws aimed at improving the employment prospects for individuals with a conviction record. A number of laws instituted "ban the box" policies, which prevent prospective employers from requiring the disclosure of criminal history information at the initial stages of the application process. Other states enacted laws to remove or mitigate obstacles individuals with criminal histories face when seeking to be licensed in certain professions. Meanwhile, other laws focused on offering positive incentives, such as tax credits, to employers who hire ex-offenders or on removing or minimizing potential legal liability associated with hiring people with criminal records.

Ban the box

"Ban the box" initiatives—which take their name from the question on job applications that asks the applicant to "check this box if you have ever been convicted of a crime"—are designed to facilitate the transition of ex-offenders into the workplace by delaying an inquiry into an individual's criminal history until the employer can get some sense of the prospective employee as a person, and not simply as an ex-offender. In particular, these initiatives urge employers to screen candidates based on job skills and individual qualifications before looking into an applicant's criminal history. However, these laws vary both in strategy and impact. For example, some laws apply only to public employers, while others include private employers. Some policies specify a point in the hiring process when an employer is permitted to obtain criminal history information (e.g., at the interview stage or after a conditional offer is made) while others institute time limitations after which criminal convictions may no longer be considered at all. Finally, some ban the box laws not only delay a criminal history inquiry, but also outline requirements for responsible consideration in the event a background check returns information regarding a conviction, such

as requiring that arrest records and certain misdemeanor records be disregarded or requiring the employer to consider the nature of the offense and the time elapsed since the conviction.

Ban the box laws have steadily gained momentum since 1998, when Hawaii was the first state to adopt the initiative. Since then, at least fourteen states, the District of Columbia, and seventy localities have adopted ban the box policies, a majority of which were enacted from 2009 through 2014.[53] Four of those states are:

- **Minnesota HF 1301 (2009)** institutes a ban the box policy for prospective state employees. Public employers may not inquire about an individual's criminal record until after the applicant has been selected for an interview. **Minnesota SF 523 (2013)** extended that protection to prospective private employees. Private employers may not consider, inquire about, or require disclosure of criminal records until after an applicant is selected for an interview, or if no interview is offered, until after a conditional offer of employment is made.
- **New Mexico SB 254 (2010)** mandates that criminal conviction history may not operate as an automatic bar to state employment or licensing, and only in certain circumstances can it be considered. An employer or licensing agency may not inquire about a criminal record on an initial application and may only consider a person's record once the applicant has been selected as a finalist. Notably, arrest records not leading to conviction, and misdemeanor records not involving moral turpitude, cannot be considered at all.
- **Indiana HB 1033 (2012)** prohibits an employer from asking an applicant whether he or she has had a criminal record sealed or restricted. An employer's non-compliance is now a class B infraction, which carries a maximum penalty of $1,000.[54]
- **Delaware HB 167 (2014)** prohibits public employers from inquiring about or considering criminal history, credit history, or credit score until after the first interview. Although employers may inquire into these things later in the application process, they may not consider felony or misdemeanor convictions if more than ten or five years, respectively, have elapsed since release from custody (or from the sentencing date if there was no incarceration). If these time periods have not yet elapsed, employers must still consider the nature of the crime and its relationship to the job, any rehabilitation or good conduct demonstrated by the applicant, the time elapsed since the conviction, and the likelihood that the circumstances leading to the offense will recur.

Reducing restrictions on licensing

Based on the presumption that individuals with a criminal record are less trustworthy or more crime-prone than others, criminal records often render individuals with criminal histories ineligible to enter entire professions, such as those such as plumbing, teaching, and nursing, which require practitioners to be licensed, and for which licensing regulations can disqualify those with conviction histories.

From 2009 to 2014, eight states enacted 11 laws to remove or relax disqualifications to certain licensed professions applicable to those with criminal records. Some of these laws reduced or eliminated waiting periods before an offender may apply for a license. Others instituted a "ban the box" in the licensing context—these laws prohibit licensing agencies from obtaining criminal history information at the initial application stage, and often require agencies to consider factors such as the time elapsed since the conviction and the relationship between the license and the conviction offense. Some laws adopted an intermediate approach, allowing for conditional licenses, which become permanent after one year without incident. Finally, other laws go even further and prohibit outright disqualification from a license solely on the basis of a criminal record. Five of those states are:

- **Delaware SB 59 (2011)** reduces the waiting periods across all state occupational and licensing codes before an ex-offender may receive a waiver of his or her conviction. The felony waiting period is changed from five years after completion of sentence to five years from conviction, as long as the individual is not serving any part of his or her sentence at the time of application. Waiting periods for misdemeanors are eliminated.
- **Florida SB 146 (2011)** prevents state agencies from denying applications for licenses, permits, employment, or certificates solely on the basis of an applicant's criminal history. Applications for firearm or concealed carry licenses are excluded.
- **Louisiana HB 295 (2012)** prohibits disqualification or ineligibility to practice a licensed trade or profession solely because of the existence of a criminal record, unless the conviction directly relates to the position sought.
- **Ohio SB 337 (2012)** prohibits specific agencies from denying licenses on the basis of criminal history after a one-year misdemeanor waiting period and a three-year felony waiting period, so long as the conviction offense is not related to the license, is not a first- or second-degree crime of violence, and is not a sex offense. Even before the one- and three-year waiting periods have elapsed, the licensing board or agency may issue licenses on a discretionary basis. Additionally, SB 337 authorizes conditional licenses to be issued, which become permanent after one year.
- **Texas HB 798 (2013)** amends the occupational licensing law so that those convicted of certain misdemeanors remain eligible to obtain licenses, unless the license authorizes the possession of a firearm and the misdemeanor conviction was a crime of domestic violence.

Reducing risk to employers

In today's litigious environment, employers can be hesitant to hire individuals with criminal records because of heightened exposure to negligent hiring or negligent retention lawsuits in the event an ex-offender commits a crime or causes harm to another person (for example, a customer, client, or another

employee) while carrying out his or her work duties .[55] Broadly speaking, these lawsuits are designed to allow an individual who is harmed by the work-related conduct of an employee with a criminal history to sue the employer for negligently hiring or retaining someone who is not fit to be an employee.

From 2009 to 2014, at least 10 states and the District of Columbia enacted laws removing this hurdle by shielding employers from liability in these lawsuits, including:

> **Colorado HB 1023 (2010)** precludes the use of an employee's criminal history in a civil action against an employer if the employee's record was sealed, the record of arrest or charge did not result in a conviction, the employee received a deferred judgment, or if the criminal history was not related to the facts giving rise to the lawsuit.

> **Massachusetts SB 2583 (2010)** shields employers from liability if they used the state's background check system (CORI) to conduct the initial background check on the employee. Conversely, the employer is not shielded from liability if it used a commercial background check provider, because CORI provides safeguards and includes limitations that commercial systems do not.

> **District of Columbia B19-889 (2012)** provides that criminal history information may not be used as evidence in a civil suit if an employer made a reasonable hiring decision in light of specified considerations, such as the relationship of the conviction offense to the employee's job duties, the time elapsed since the conviction, and demonstrated rehabilitation or good conduct.

> **Minnesota HF 2576 (2014)** makes an employee's expunged criminal history inadmissible as evidence in a civil case against an employer or landlord.

Incentivizing employers

From 2009 to 2014, five states enacted laws aimed at facilitating the employment of individuals with criminal histories by offering positive incentives to prospective employers. For example, some laws raised the amount of tax credit available to businesses that hire ex-felons; others required the removal of employers' names and contact information from sex offender registries, or repealed a restriction that prevents individuals with criminal records from working around alcohol. Three of those states are:

> **New York AB 9706 (2010)** allows individuals with a felony conviction to work at a restaurant, catering facility, hotel, club, or recreational facility which serves alcohol. Previously, no holder of an alcoholic beverage license could employ a person with a felony conviction other than a retail store with off-premises consumption.

> **Illinois SB 1659 (2013)** increases the tax credit for wages paid to ex-felons from $600 to $1500. The law also increases from one year to three years the time period after release in which an employer must hire an ex-offender to qualify for the credit. Employers are not eligible to claim the tax credit for

hiring individuals with a conviction for a sexual offense.

- **Texas SB 369 (2013)** incentivizes employers to hire people with a sex offense conviction, by clarifying that information regarding a sex offender's employer's name and address may no longer be listed publicly on the sex offender registry.
- **Delaware HB 167 (2014)** introduces a state policy to consider the fairness of employers' background check policies when evaluating contracts for state business and only do business with contractors that have written policies and standards that comply with the state's ban the box provisions

ACCESS TO INFORMATION

The impact of collateral consequences has grown exponentially as legislators have added more consequences to state codes and technology has increased public access to criminal records.[56] Because defendants are not constitutionally entitled to notice of these consequences before being convicted (apart from immigration consequences), many are imposed without warning.[57] Not only are individuals unaware of the restrictions they will face after sentence completion, they are also uninformed about remedies to which they may be entitled. At the same time, with easy access to criminal record repositories, employers, landlords, or admissions committees can easily discover criminal history records, even those that are outdated or incorrect. The stigma resulting from the knowledge of a person's criminal history can act as a *de facto* bar to housing and other forms of social acceptance, even where no legal bar exists.[58]

Since 2009, at least 17 states and the District of Columbia have taken steps to inform people of their rights, clarify remedies concerning criminal record information, or delineate how individuals or corporations can responsibly use criminal history information to ensure procedural fairness. Some of these laws require that individuals leaving prison be given information on how their convictions may impact their civil rights and on expungement and sealing remedies available to them. Other laws require employers who reject a candidate because of an individual's criminal history to institute an appeals process through which a candidate can challenge inaccurate criminal history data or present evidence why his or her criminal history should be overlooked. Other laws require employers to standardize and publish their criminal background policies, and some limit the information that third-party background check providers may disclose. Finally, other laws provide for enforcement mechanisms to ensure against the misuse of a person's criminal history information by, for example, making it a crime to harass a person about his or her criminal history. Seven of those states are:

- **New Jersey A 4201 (2009)** requires state correctional facilities to provide individuals leaving prison with written information concerning voting rights, expungement options, programs to help with employment, housing, and education needs, and generalized information about child support require-

ments. The state is also required to provide notification of any fines due, outstanding warrants, a criminal history report, and a full medical record.

- **California SB 1055 (2010)** requires that a person, who is rejected as a result of a criminal background check by a state agency for employment, contract, or volunteer work involving confidential or sensitive information, be provided with a copy of his or her criminal record. Additionally, this law requires the state to institute a written appeals process for rejected individuals to challenge ineligibility determinations based on the individual's criminal record.
- **Massachusetts SB 2583 (2010)** makes it a crime to use criminal records to harass someone, and also makes it a separate offense to commit a crime against a person based on their criminal record, both punishable by up to one year incarceration and/or a maximum fine of $5,000.[59] The law also requires any employer who conducts at least five background checks in a year to have a standardized, published policy for doing so, including provisions regarding notifying the applicant of a potential adverse decision, supplying the applicant with copy of the background check, and informing the applicant of the appeals process for correcting an incorrect record. Non-compliance may result in a fine. Additionally, the law allows free, periodical self-audits of all requests for criminal records received by the state and, so long as funding allows, requires the state to notify a person when an inquiry is made into his or her criminal record.
- **Indiana HB 1033 (2012)** specifies that a criminal history provider may only provide information that relates to a conviction. The provider may not provide any information related to an infraction, an arrest, a charge that did not lead to a conviction, an expunged or restricted conviction, or any conviction of a Class D felony that has been downgraded to a misdemeanor (which may only be shown as a misdemeanor conviction). The provider is also prohibited from providing outdated information and information it knows to be inaccurate. Notably, the law introduces civil penalties for non-compliance. Now the attorney general may recover a civil penalty from the provider and the individual who is the subject of the criminal history report may sue for damages.
- **Colorado SB 123 (2013)** requires probation and parole officers to give notice at the final supervision meeting with individuals convicted of certain crimes that they have the right to have their criminal record sealed and that doing so can alleviate certain collateral consequences. Officers must provide their supervisees with a list of eligible offenses and the associated waiting periods.
- **Hawaii HB 1059 (2013)** requires judges to advise criminal defendants of potential immigration consequences before he or she enters a plea or begins trial.

ADDRESSING DISCRETE COLLATERAL CONSEQUENCES

From 2009 to 2014, 19 states passed laws addressing specific collateral consequences or areas of concern, including those with respect to housing, immigration, health care, family issues, financial health, education, public assistance, enfranchisement, sex offender registries, and driving privileges, including: [60]

- **South Dakota HB 1123 (2009)** removes the prohibition on welfare eligibility for felony drug offenders.
- **New York AB 5462 (2010)** provides an exception to the requirement that the state file for termination of parental rights when a child is in foster care for a certain length of time. The parent may avoid having his or her parental rights terminated if the child is in foster care due to the parent's incarceration or participation in a residential substance abuse treatment program and the parent maintains a meaningful role in the child's life.
- **Arkansas SB 806 (2011)** mandates that a criminal conviction cannot be used to disqualify a person from eligibility for a state-subsidized benefit unless there is a specific statutory bar. Benefits include scholarships, grants, and loan forgiveness programs.
- **Delaware SB 12 (2011)** repeals the lifetime ban on receiving certain federal benefits for those with a felony drug conviction. Although under federal law anyone who is convicted of a drug-related felony cannot receive SNAP (Supplemental Nutrition Assistance Program, formerly food stamps) and TANF (Temporary Assistance to Needy Families) benefits, states are free to pass legislation that limits the ban or eliminates it entirely.
- **Washington SB 5168 (2011)** reduces the maximum sentence for gross misdemeanors from 365 days to 364 days in order to avoid federal immigration consequences that are triggered by conviction of an offense carrying a possible one-year sentence of imprisonment.
- **Washington SB 5423 (2011)** creates a mechanism for courts to eliminate interest accrued on non-restitution debt during incarceration. This applies to all legal financial obligations levied as a result of a criminal conviction, except for restitution.
- **Ohio SB 337 (2012)** allows for modification of child support orders, which are based on a person's income, when a parent suffers a reduction in income due to incarceration. Previously, incarceration was deemed voluntary unemployment and potential income was imputed to the parent for the

STATE TASK FORCES

The information vacuum surrounding collateral consequences is often so vast that even policymakers struggle to stay abreast of the array of provisions that impose collateral consequences on individuals with a criminal record. These provisions are rarely codified in one place, but are instead often spread across multiple statutes, regulations, or policies on the federal, state, and local levels. As a result, at least eight states passed bills establishing task forces or commissions to catalogue collateral consequences and consolidate expungement procedures. These states are:

- **Arkansas SB 806 (2011)**
- **Florida SB 146 (2011)**
- **Illinois HB 297 (2011)**
- **Massachusetts SB 2583 (2010)**
- **Nevada SB 395 (2013)**
- **New Hampshire HB 1533 (2010) and HB 1144 (2014)**
- **South Carolina SB 900 (2014)**
- **Vermont HB 413 (2014)**

purposes of calculating how much child support was owed. Under this law, for those incarcerated at least one year, in most situations, incarceration is no longer considered voluntary unemployment and no potential income is imputed to calculate child support obligations. Notably, when calculating potential income after release, this law considers the parent's decreased earning capacity due to a felony conviction.

- **California AB 720 (2013)** provides than an inmate of a county jail may not be terminated from state Medicaid (Medi-Cal) solely because of incarceration. Instead, the inmate's Medi-Cal enrollment will be suspended until release. Additionally, the law allows county jails to enroll eligible inmates who previously were not enrolled, with coverage taking effect upon release.
- **Colorado SB 229 (2013)** allows for removal from the sex offender registry if the individual was under 18 years of age at the time of the commission of the offense. Previously, removal was only permitted when the offender was under 18 at the time of conviction.
- **Delaware HB 10 (2013)** amends the state constitution by eliminating the five-year waiting period for voting rights to be restored to eligible felons after sentence completion. Those convicted of murder, manslaughter, corruption, or a sex crime are ineligible and remain disenfranchised.
- **Georgia HB 349 (2013)** gives judges in drug and mental health courts the discretion to fully restore driving privileges or issue limited driving permits. Previously, a person had to wait at least one year from the date of his or her conviction or plea to apply for early reinstatement and the application was made to the Department of Driver Services, not to the court. **Georgia HB 365 (2014)** extends HB 349 so that judges of any court may restore driving privileges, not just judges in drug and mental health courts.
- **Louisiana HB 219 (2013)** mandates that the mere existence of a criminal record cannot disqualify someone from adopting a child. When considering whether to approve a prospective adoption placement, a family court must evaluate the number and type of offenses and the length of time that has passed since the most recent offense.

Limitations of reform

The volume of bills passed that mitigate the impact of collateral consequences over the last six years —at least 155 bills in 41 states and the District of Columbia, 93 of which were enacted in 2013 and 2014 alone—indicates that state legislatures now acknowledge that to improve public safety, tangible steps are needed to support the successful reintegration of convicted individuals after sentence completion. Research has shown that employment, stable housing, educational opportunities, and civic engagement are all critical to reducing the risk of reoffending. Yet the barriers erected by collateral consequences impede the ability of individuals with criminal histories to achieve these important goals.[61]

FAMILY STABILITY

Involvement in the criminal justice system often has a destabilizing effect on families. Over half of state inmates and nearly two-thirds of federal inmates are parents of children under age 18.[a] As of 2007, 2.3 percent of individuals under age 18 had at least one incarcerated parent, an increase of 80 percent since 1991.[b] Most of these parents—even those who did not live with their children—contributed income, child care, and social support before imprisonment.[c] However, during incarceration, fathers in particular lose contact with their children. Only 40 percent have weekly contact of any kind with their child, but contact declines as the sentence continues; over half of fathers in prison never have an in-person visit with their child.[d]

Strong and secure family structures increase an individual's incentives to conform with social and legal rules and norms—individuals with fewer attachments have less to lose.[e] Not surprisingly, children with at least one incarcerated parent suffer higher rates of low self-esteem, depression, emotional withdrawal, and disruptive behavior, and have an increased likelihood of future delinquency and criminal offending.[f]

Even though the parent-child relationship often deteriorates during incarceration, many fathers view prison as an opportunity to reflect on their relationships with their children, improve as parents, and prepare to start over upon release.[g] Fathers who successfully do so tend to have lower recidivism rates, as family ties act as rehabilitative assets.[h] It is in the interests of public safety, therefore, that public policy focus on helping incarcerated parents maintain and strengthen family bonds, and assisting these parents in providing support for their children after release—for example, by increasing employment opportunities or opting out of bans on public assistance for certain ex-offenders.[i]

In the last several years, several states have taken steps to strengthen family relationships for incarcerated offenders or improve their capacity to provide support upon release. For example, Nebraska LB 483 (2013) creates a family-based reentry program for incarcerated parents with young children that incorporates parental education, relationship skills development, and reentry planning in conjunction with an individual's family; and Hawaii SB 2308 (2014) assists children with incarcerated parents by facilitating visitation and by providing social welfare benefits, programming, and reentry support.

Washington HB 1284 (2013) and **New York AB 5462 (2010)** make it harder for an incarcerated parent's parental rights to be terminated because of an extended absence from the child's life due to imprisonment. **New York AB 8178 (2009), Ohio SB 337 (2012),** and **West Virginia HB 4521 (2012)** allow child support obligations to be recalculated during or after incarceration so that the formerly incarcerated can provide the support they are able to, and are not burdened by outstanding payments they have no reasonable ability to make.

[a] Lauren E. Glaze and Laura Maruschak, (Washington, DC: BJS, 2008, revised 2010), 1.
[b] Ibid.
[c] Jeremy Travis, Amy L. Solomon, and Michelle Waul, (Washington, DC: The Urban Institute, 2001), 38.
[d] See ibid. There are many factors that make in-person visits difficult for children. For instance, long distances between the prison and the community where the child lives, little food, limited activities, time limitations, and non-accommodating physical facilities. For more information, see Council on Crime and Justice, (Minneapolis, MN: Council on Crime and Justice, 2006). Over 60 percent of parents serving state sentences and over 80 percent of parents serving federal sentences are housed more than 100 hundred miles away from their homes. Over 40 percent of parents in the federal system are more than 500 miles from home. See Philip M. Genty, "Damage to Family Relationships as a Collateral Consequence of Parental Incarceration," 30(5) (2002), 1673.
[e] Jeffrey Fagan and Tracey L. Meares, "Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities," 6 (2008).
[f] Jeremy Travis, Amy L. Solomon, and Michelle Waul, (Washington, DC: The Urban Institute, 2001), 39.
[g] J.A. Arditti, S.A. Smock, and T.S. Parkman, "It's Hard to Be a Father: A Qualitative Exploration of Incarcerated Fatherhood," 3 (2005); and K. Healy, D. Foley, and K. Walsh, "Parents in prison and their families: Everyone's business and no-one's concern," (Queensland, Australia: Catholic Prison Ministry 2000).
[h] J. Petersilia, (New York: Oxford University Press, 2003), 42; J. Creasie Finney Hairston, Prisoners and Families: Parenting Issues During Incarceration," Paper presented for U.S. Department of Health and Human Services and Urban Institute funded conference (National Institutes of Health January 30-31, 2002); and Sue Howard, Paper presented at the 7th Australian Institute of Family Studies Conference, Sydney, Australia.
[i] Jeremy Travis, Amy L. Solomon, and Michelle Waul, (Washington, DC: The Urban Institute, 2001), 40.

IMMIGRATION CONSEQUENCES

Even if individuals are reasonably shielded from state-imposed collateral consequences, they are still exposed to collateral consequences imposed on the federal level, particularly immigration consequences.

As a matter of law, immigrants—even permanent residents—will be deported upon conviction of any state crime punishable by at least one year of incarceration, regardless of whether the state classifies the offense as a misdemeanor or felony.[a] Some states, such as **Nevada** with **SB 169 (2013)**, and **Washington** with **SB 5168 (2011)**, have responded by reducing the maximum incarceration for a misdemeanor from 365 days to 364 days, to explicitly avoid triggering federal immigration consequences.

In 2010 the Supreme Court recognized in *Padilla v. Kentucky* that there are constitutional limits on the immigration-related consequences persons will suffer when they do not receive sufficient notice of potential deportation as a result of a criminal conviction.[b] In *Padilla*, the defendant was a permanent resident and Vietnam War veteran who had been living lawfully in the United States for decades before his arrest for transporting marijuana. His attorney advised him that he need not worry about any immigration consequences of a guilty plea due to his status as a permanent resident. However, the attorney was incorrect and the federal government instituted deportation proceedings. When Mr. Padilla sued, the Supreme Court, emphasizing the severity and certainty of deportation, held that a defense attorney must advise a non-citizen defendant about immigration-related collateral consequences of conviction before accepting a plea.[c]

Two states have recently passed laws to ensure that criminal defendants are aware of the possible immigration-related ramifications of a guilty plea. Through **HB 1059 (2013)**, **Hawaii** now requires all judges to inform defendants of possible immigration-related consequences before the entry of plea or at the start of trial. Likewise, **Vermont** recently passed **HB 413 (2014)**, which requires all defendants to be given information regarding all possible collateral consequences, including immigration-related consequences, both at the time they are charged and before entering a plea.

[a] Padilla v. Kentucky, 559 U.S. 356 (2010). For information regarding the import of the decision, see Margaret Colgate Love, "The Collateral Consequences of *Padilla v. Kentucky:* Is Forgiveness Now Constitutionally Required?" *University Of Pennsylvania Law Review PENNumbra* 160 (2011) (deportation is "virtually inevitable" because "Congress has eliminated judicial and administrative mechanisms for discretionary relief"); and Gabriel J. Chin, "Making *Padilla* Practical: Defense Counsel and Collateral Consequences at Guilty Plea," *Howard Law Journal* 54 (2011).

[b] See ibid.

[c] For more information about the *Padilla* case generally and possible future implications for other collateral consequences, see Margaret Colgate Love, "Collateral Consequences After *Padilla v. Kentucky:* From Punishment to Regulation," *Saint Louis University Public Law Review* 31 (2011).

Some legislative efforts to ameliorate collateral consequences and support reentry come from the recognition that individuals with criminal histories deserve a second chance at full citizenship and eschew the sharp moral distinctions between law-abiding and law-breaking individuals that had been the hallmark of the tough-on-crime era. Significantly, this recognition has been bipartisan in nature, with members of the two major parties supporting this idea. However, while recent policy shifts to remove or alleviate the impact of these consequences may indicate a broader shift in how the criminal justice system views law-breakers, the vast number of collateral consequences largely remains in place and a closer look at recent legislation suggests that efforts to date do not go far enough to achieve the critical public safety outcomes that are also sought.

REFORMS ARE NARROW IN SCOPE

Much of recent legislation is narrowly tailored in terms of which offenders and offenses it impacts, limiting its potential. For instance, recent legislation that creates or expands expungement or sealing mechanisms typically does not go beyond first- or second-time low-level offenders (most often misdemeanor or low-level felony offenders), and only applies to certain types of offenses, typically drug or property offenses. Offenders who are most often disqualified are those with lengthy criminal histories or who are considered habitual offenders; and whole categories of offenses are frequently excluded from the purview of new or existing relief mechanisms—typically, all violent or sexual offenses.

While many of these exclusions on their face may make sense, a lengthy criminal history may nonetheless be made up entirely of property, drug, or fraud-related charges. For instance, the label of violent or nonviolent as a demarcation for eligibility can be a blunt tool that excludes some non-serious offenders since violent offenses are typically broadly defined. Often, to be considered "violent" the law only requires that an individual possess a weapon while committing an offense, even when not used, or never intended to be used. Additionally, some offenses, such as burglary and drug trafficking, that often do not involve force or violence are nevertheless classified as violent.[62] These categories are fundamentally too broad. Relief should be made available on a case-by-case basis and use risk assessments from corrections officials and others.

RELIEF MECHANISMS ARE NOT EASILY ACCESSIBLE

While narrow criteria for eligibility may limit the pool of individuals impacted, other factors such as distance, prohibitive economic costs, and unfamiliarity with formal court procedures can make access to relief mechanisms difficult even for those who are eligible. For example, some relief mechanisms (e.g., expungement or sealing remedies, certificates of recovery or rehabilitation, offense downgrades) require a formal petition be submitted to a court, often requiring a public hearing with payment of an applicable filing fee—a process that can be time-consuming, confusing, and costly.[63] Cost alone can deter oth-

erwise eligible individuals—for example, in Louisiana, the nonrefundable filing fee for expungement is $350.[64] Even so, individuals may not have the necessary time because of work, school, or because they are a primary caregiver with little ability to take the necessary time off. If cost and time are not problems, the filing process itself can be extremely onerous.[65] For example, individuals often have to gather documentation of their criminal histories from multiple state agencies and bodies, commonly in-person and for a fee. If and when these records conflict with one another, or when records are missing, the individual shoulders the burden of reconciling any discrepancy or deficiency.[66] Additionally, in many states, petitioners must give notice of their intention to file and any ultimately issued relief certificates must be sent to all state agencies whose records stand to be affected by the order.[67] Since public defenders are typically not available at this point in the criminal justice process, and given the potential complexity of such petitions, individuals may need to hire independent counsel to assist in navigating the process.

WAITING PERIODS ARE LONG IN MANY CASES

Although some states have reduced waiting periods after which individuals can access relief, many remain excessively long. For example, under **Massachusetts SB 2583 (2010)**— a law that shrinks the applicable waiting period for expungement—individuals with a misdemeanor conviction must still wait five years, and with a felony conviction 10 years, before they can petition a court. Under **North Carolina HB 1023 (2012),** first-time nonviolent felony or misdemeanor offenders must wait 15 years from completion of sentence; and although **Oregon's HB 3376 (2011)** applies to higher-level felony offenders, the applicable waiting period remains a very long time indeed, at 20 years. While waiting periods are typically justified on public safety grounds, long waiting periods run the risk of increasing the likelihood of recidivism since without relief many are denied jobs, housing, public services, educational opportunities, civic engagement (including voting), and custody of children. Moreover, research demonstrates that long waiting periods have only a marginal impact on public safety.[68]

Even when applicable waiting periods have passed, individuals face other obstacles, including proving certain factual circumstances, such as gainful employment or a requisite level of rehabilitation—milestones made difficult to achieve by the substantial barriers many of the education, employment, and licensing-related collateral consequences themselves create. Moreover, due to the discretionary nature of many recent reforms, a petition's success still depends on the determination by a judge or the agreement of the prosecutor (or both), and it is by no means certain that judges or prosecutors will participate in a new policy, even when all eligibility requirements are objectively satisfied.[69]

NEW RULES RESTRICTING THIRD-PARTY USE OF CRIMINAL HISTORY ARE DIFFICULT TO ENFORCE

Although some new laws aim to circumscribe third-party use of criminal history (e.g., "ban the box" initiatives regarding employment or licensing), they offer no guarantee that third parties will not use criminal history to discriminate against individuals with a past criminal conviction, absent strong enforcement mechanisms. For example, while many of these laws prohibit the denial of an employment applicant "solely on the basis of an applicant's criminal history," there is no prohibition against the would-be employer considering criminal history among a variety of other factors, and therefore no guarantee that an applicant's criminal history will not serve as the primary basis for job or licensing denial. To activate their right against discrimination, rejected applicants would have to *know* that a rejection was exclusively based on their criminal history, information not regularly provided to applicants. Since many states do not require a formal report of an adverse employment decision, applicants would have to sue the prospective employer in order to gain access to their application file; or more unlikely, the employer would have to admit to denying an application on an illegal basis.[70] Clearly, for many jobs a certain kind of criminal record is a legitimate reason to deny employment, but a blanket refusal to hire anyone with a record is discriminatory.

In addition, as state agencies and court systems routinely make criminal records and dockets available online, records are easily duplicated by, or sold directly to, a growing sector of private companies who perform "background search" services, often pulling from their own independently created databases.[71] However, unlike state record repositories, these private companies have little incentive to remove or remedy inaccurate data, nor are they required to remove sealed or expunged records—fundamentally undermining the effectiveness of relief mechanisms.[72] Because these companies are not substantially regulated by federal or state law, efforts to enforce fair reporting practices are difficult.[73] Without limiting online access to criminal records—or at minimum, ensuring that third-party commercial databases are strictly regulated to ensure accuracy in reporting and compliance with relief orders—unfairly and incorrectly reported criminal histories will continue to hinder the efforts of people with a record to engage productively in society.

Colleges and universities also routinely collect criminal histories through their admissions processes—despite the lack of empirical evidence that shows students with criminal records pose a risk to on-campus safety.[74] A lack of transparency exacerbates the issue, as these institutions often do not have written policies regarding how to treat candidates with criminal records.[75] Without clear information on how educational institutions utilize criminal histories in their decision making, rules that restrict the use of criminal records in admissions decisions are hard to formulate and difficult to enforce.

Recommendations

Policymakers interested in promoting safer communities and better outcomes for justice-involved people and their families would do well to consider instituting reforms to ameliorate the impact of collateral consequences for individuals after sentence completion. To ensure future reform efforts fulfill their promise and are sustainable and comprehensive, policymakers should consider the following recommendations:

PROMOTE THE FULL RESTORATION OF RIGHTS AND STATUS

Full rights and status should be restored to individuals as close to the completion of their sentences as possible. An individual's criminal history status often impedes that person's ability to achieve critical milestones shown to lower rates of reoffending, including employment, housing, and education. Research demonstrates that the public safety benefits of restricting and monitoring the activities of these people is, as years go by, increasingly outweighed by the negative public safety consequences of long-term barriers to reentry and rehabilitation.[76] Policymakers should weigh this risk and promote the restoration of rights and status for individuals as close as possible to the completion of their sentence.

APPLY REMEDIES TO MORE PEOPLE

Criminal records cast a long shadow over an individual's life—even if the individual was convicted of a minor crime—or, due to the widespread availability of arrest records, not convicted at all. By making sealing and expungement remedies more broadly available, policymakers can support increased access to educational, employment, and financial progress by individuals whose continued stigmatization in no way serves the public interest. Broadening eligibility for relief can be achieved through a variety of means: expanding the classes of eligible crimes; instituting automatic expungement of arrests that did not lead to conviction, or of certain types of convictions directly after sentence completion; or making it easier for individuals to demonstrate that they are fit for sealing or expungement by either easing the elements of rehabilitation individuals must prove, or by presuming individuals have fulfilled those requirements unless a prosecutor shows otherwise. Similarly, mechanisms which allow individuals to reduce felony records to misdemeanor records (where these records could also be eligible for sealing or expungement) would both reduce the number of individuals impaired by the collateral consequences particular to felonies and further expand the pool of individuals eligible to achieve a clean or diminished criminal record.

Where expungement or sealing is unavailable, increasing the availability of and broadening the criteria for certificates of recovery or rehabilitation can provide relief to a greater number of individuals facing debilitating barriers to education, employment, licensing opportunities, and housing.

MAKE REMEDIES EASIER TO ACCESS

While increasing the availability and scope of relief is critical, the potential impact of these remedies is significantly undermined if eligible individuals cannot access them due to lack of awareness, prohibitively high costs, an impenetrable process, or excessively long waiting periods. To raise awareness, laws are necessary that require convicted individuals be fully apprised of the impacts of their criminal records and the relief for which they may be entitled. For instance, requiring departments of correction or community corrections agencies to provide this information upon sentence completion can help affected individuals understand their rights and navigate these processes.

Decreasing the procedural hurdles and streamlining processes—such as mitigating the costs and time associated with various forms of relief—are also necessary to improve the ability of unrepresented individuals unfamiliar with court procedures to access the relief. For example, allowing for presumptive or automatic expungement or sealing of certain records can reduce transaction costs for individuals as well as for the court system. Furthermore, excessively long waiting periods and unrealistic criteria which can present significant obstacles to relief should be reduced. Finally, courts should make *pro se* instructions and forms readily available and user-friendly, perhaps also supplying knowledgeable clerks available to assist one or two days a week, or even during an occasional evening or Saturday.

ESTABLISH CLEAR STANDARDS FOR AND OFFER INCENTIVES TO THIRD-PARTY DECISION MAKERS

Because employers, housing bodies, and educational institutions often make decisions every day based on an individual's criminal history without necessarily knowing the full meaning of that history and its safety implications, clear standards of how criminal histories should be considered are necessary to help ensure that collateral consequences are only imposed when they further public safety, are used as fairly as possible, and actually serve the public's interest. There is also a great need for increased transparency on how decisions are made in all areas. Governing bodies, associations, and others must promote full understanding of how and when collateral consequences can permissibly impact decision making and implementing mechanisms to appeal adverse decisions based on criminal history further ensures fairness, safeguards individuals' due process rights, and provides an additional opportunity to monitor compliance.

The housing, employment, and educational contexts are critical areas in which clear and enforceable standards for decision makers are badly needed. As such, recommendations specific to these contexts are discussed below.

> **Employment.** Despite what is known about the benefit of employment in reducing an individual's likelihood of reoffending, biases against individuals with criminal records, fear of liability, ignorance about the meaning or implications of those records, and inadequate guidance for when and how

records should be used in decision making all contribute to preventing-many employers from hiring qualified and worthy individuals. Employers need clear guidance about how to use criminal history information, about their liability and measures to protect themselves, and both incentives and enforceable guidelines for using an individual's criminal history in their decision making.[77]

- **Housing.** While it is understandable that landlords and other housing providers want to keep their premises safe, properly used, and paid for, a lack of relevant guidelines creates the risk of housing denials based solely on the blanket use of criminal records. Housing regulations that clarify when use of an individual's criminal history is permissible and reversing policies that make individuals with criminal records presumptively ineligible for public housing (in addition to other social benefits) ensures that individuals are able to access an important safety net when they need it most.
- **Education.** Federal policies on campus crime reporting and a recent spotlight on sexual assault on campuses have doubtless made educational institutions wary and careful in their admissions policies. This persists despite an absence of empirical evidence supporting the notion that individuals with criminal histories pose greater risks to on-campus safety.[78] Policymakers can assist these institutions by creating well-informed guidelines regarding when and how educational institutions can use criminal history in admissions determinations, and require that these institutions document their compliance with them. Such guidance would also offer protection to institutions that can demonstrate that they complied. For example, in the fall of 2014 New York State Attorney General Eric T. Schneiderman reached an agreement with three New York colleges that prohibits inquiries on arrest history or convictions that were sealed or expunged. Moreover, use of criminal convictions to disqualify candidates is only permitted where the conviction indicates a public safety threat or implicates the student's academic program and responsibilities.[79]

PUBLIC HOUSING

One of the most challenging tasks for a person with a criminal record to accomplish can be finding a place to live. In recent years, at least four states have passed legislation aimed at making it easier for individuals with criminal convictions to obtain housing. Vermont SB 291 (2014) establishes transitional housing for prisoners reentering the community. Connecticut SB 364 (2014) requires state agencies to establish housing initiatives to provide affordable housing to vulnerable groups, including community-supervised offenders with mental health needs. California SB 1021 (2012) requires the Department of Corrections to create a supportive housing program that provides wraparound services, including housing location services and rental subsidies, to mentally ill parolees at risk of homelessness. Finally, Kentucky HB 463 (2011) ensures that a variety of housing arrangements shall be approved for parolees. Under current law, parolees in Kentucky being released to a nonresidential facility must obtain "appropriate" housing. This law specifies that the Department of Corrections must approve any form of acceptable housing, including apartments, homeless shelters, halfway houses, and, if the parolee is a student, college dormitories.

Most individuals with criminal histories, however, do not have access to transitional housing programs like those mentioned above, and many simply want to return home to their families, some of whom reside in public housing developments. Public housing developments operate under a complex set of rules, including requirements by the U.S. Department of Housing and Urban Development (HUD) and policies of the local public housing authority as well as third-party management companies with whom housing authorities contract. In some cities, local ordinances are also in play. Despite public perception to the contrary, HUD only prohibits access to public housing for people with two types of convictions: those convicted for production of methamphetamine on federally-assisted housing and lifetime sex offender registrants. Although HUD also prohibits access to people who have been evicted for drug-related criminal activity in the previous three years, this is not an absolute ban and can be waived with proof of completed drug treatment. Beyond these specific requirements, it is up to each public housing authority to determine how criminal convictions can be dealt with when screening housing applicants.

With people leaving prisons in ever-growing numbers, efforts are being made to expand access to public housing. In 2011, HUD explicitly encouraged housing authorities to utilize their discretion around tenant selection criteria to better serve people returning to public housing after a period of incarceration.[a] HUD is currently planning to issue further guid-

ance on how public housing authorities consider criminal convictions in tenant selection. HUD is also expected to encourage housing authorities to consider conviction but not arrest records when screening applicants and to examine serious parole violations but not technical parole violations. HUD is also expected to direct housing authorities to move away from blanket bans on certain types of convictions and to conduct, instead, individual assessments of applicants with convictions. Those assessments may include looking at a person's track record while incarcerated and after release, employment history, completion of treatment programs, and other factors known to help promote successful reentry.[b]

In the meantime, a number of housing authorities have decided not to wait for additional guidance from HUD, and, if successful, their efforts have the potential to inform how housing authorities across the country treat people with criminal convictions. Some are running new programs to help people with criminal histories access public housing (e.g., Baltimore, Chicago, and New York City), while others have well-established programs with successful track records (e.g., Oakland, CA and Burlington, VT).[c]

> **Chicago Housing Authority** launched a pilot program for 30 people who have completed a year of case management at one of three participating service providers. Providers issue a certificate to participants, which they can use as proof of mitigation of circumstances, and continue to work with them for an additional year. The pilot will serve people with families in public housing developments as well as in Section 8 housing, as well as people who wish to move into their own subsidized unit.[d] A similar pilot is underway with the Cook County Housing Authority.[e]

> **New York City Housing Authority (NYCHA)** launched a pilot program managed by the Vera Institute of Justice in 2013 for 150 people, ages 16 and over, who have been released from a correctional setting within the last three years and want to move in with family members currently residing in NYCHA apartments.[f] If approved, participants move in under temporary permission for two years and any income they generate does not impact the family's rent. They must also participate in case management services for a minimum of six months. After two years, families can apply to have them added to the lease or participants can apply for their own units without their criminal conviction record being considered.

> **Oakland Housing Authority's (OHA)** Maximizing Opportunities for Mothers to Succeed (MOMS) Program, in operation now for 13 years, connects mothers in medium or minimum security at the Santa Rita jail to housing provided by OHA. To be eligible, mothers must

complete a program in the jail and continue with case management services once they return to the community. The housing authority has 11 units set aside for program participants. At the conclusion of the approximately 12-month program, women who successfully meet their programmatic goals and lease requirements can apply for permanent housing and their prior conviction will not be held against them. The program is planning to expand to 30 units and will include some units for fathers leaving jail.[g]

Still other housing authorities are reviewing their broader tenant selection criteria. For example, in July 2014, the San Francisco Housing Authority (SFHA) modified its Admission and Continued Occupancy Policy to limit criminal record reviews to those within the past five years of an application and will only screen for drug-related convictions and violent criminal activity.[h] In addition, cities are passing ordinances following the "ban the box" approach in which criminal background checks can only be run once a person is deemed qualified for housing. For example, the San Francisco Fair Chance Ordinance, in effect since August 2014, prohibits the examination of criminal conviction records that are more than seven years old and requires the individual assessment of only those recent convictions that are directly related to the safety of persons or property in public housing.[i] Similar ordinances have been passed in other cities, including Newark, NJ.[j]

[a] Letter dated June 17, 2011 from Shaun Donovan to Public Housing Authorities. Available at http://nhlp.org/files/Rentry%20letter%20from%20Donovan%20to%20PHAs%206-17-11.pdf.
[b] Some of these programs are limited to traditional public housing, others include the Housing Choice Voucher Program, commonly referred to as Section 8.
See http://www.vera.org/blog/ron-ashford-department-housing-urban-development-hud.
[c] For more on the Burlington Housing Authority program, see http://burlingtonhousing.org/index.asp?SEC=6739A171-53A1-4137-92E8-60EC67AD46C8&Type=B_BASIC.
[d] *The Chicago Tribune*, "Proposal would ease CHA ban on ex-offenders," March 28, 2014, http://articles.chicagotribune.com/2014-03-28/news/ct-cha-ex-offender-housing-met-20140328_1_ex-offenders-charles-woodyard-cha-properties
[e] Chicago Coalition for the Homeless, "Chicago Housing Authority Board To Pilot Select Ex-offender Access Housing," November, 18, 2014, http://www.chicagohomeless.org/chicago-housing-authority-adopts-cch-pilot-allowing-select-ex-offenders-access-housing/
[f] The Vera Institute of Justice, "NYCHA Family Reentry Pilot: Reuniting Families in New York City Public Housing," http://www.vera.org/project/nycha-family-reentry-pilot-reuniting-families-new-york-city-public-housing
[g] Centerforce, "MOMS Program: Maximizing Opportunities for Mothers to Succeed," http://www.centerforce.org/programs/moms-maximizing-opportunities-for-mothers-to-succeed/
[h] The San Francisco Housing Authority, "Proposed Admissions and Continued Occupancy Policy," Revised July 2014, http://sfha.org/ca001a01.pdf, 54.
[i] The language in the ordinance defines "directly-related" as: "whether the conduct has a direct and specific negative bearing on the safety of persons or property, given the nature of the housing, whether the housing offers the opportunity for the same/similar offense to occur, whether circumstances leading to the conduct will recur in the housing, and whether supportive services that might reduce the likelihood of a recurrence are available on-site." San Francisco Fair Chance Ordinance, http://sf-hrc.org/article-49-san-francisco-police-codefair-chance-ordinance.
[j] For information about the ordinance in Newark, NJ, see https://newark.legistar.com/LegislationDetail.aspx?ID=1159554&GUID=6E9D1D83-C8D7-4671-931F-EE7C8B2F33FD

RESTRICT ACCESS TO AND USE OF CRIMINAL HISTORY INFORMATION

To combat the over-accessibility of criminal history information and inaccurate reporting, companies that publish criminal history information must be required to implement mechanisms that ensure the accuracy of their records and respond to complaints.[80] Commercial services should also be prohibited from reporting criminal history unrelated to convictions. In order to encourage appropriate use of criminal records by decision makers, particularly employers, several mechanisms can be considered. Employers can be prohibited from checking criminal history until after a conditional offer has been made. Alternatively, employers can be prohibited from considering criminal history information that did not lead to a conviction.[81] Transparency can also be ensured—for example, Massachusetts SB 2583 (2010) requires employers that regularly conduct background checks to maintain a written policy about their use of criminal records.[82] Decision makers should also be encouraged to use state background check systems over commercial databases. Incentives can be used to help ensure compliance—for example, state agencies can consider background check policies when making contracting decisions.[83]

EXPAND THE USE OF FRONT-END RELIEF MECHANISMS

Front-end relief mechanisms can minimize an individual's exposure to certain collateral consequences by limiting the extent of an individual's contact with the criminal justice system. Remedies can include deferred adjudication schemes or diversion programs, where the court process is halted and adjudication or sentencing is withheld until after a certain amount of time has passed and/or certain requirements (such as completion of a program and good behavior) have been met, ultimately resulting in a dismissal or a vacated conviction or guilty plea. Automatic expungement or sealing mechanisms following a convicted individuals' completion of certain requirements are also mechanisms for providing front-end relief to collateral consequences. As these mechanisms are often more accessible and efficient than their back-end counterparts, these remedies should be extended to include broader categories of offenders and implemented more widely.

INVOLVE PROSECUTORS AND JUDGES IN REFORM EFFORTS

Policymakers must ensure that judicial and prosecutorial discretion does not undercut the impact of their reforms. For example, a locality may create or expand deferred adjudication or diversion programs to reduce the number of individuals subject to collateral consequences. However, unless prosecutors and judges elect to utilize the schemes, these reforms would ultimately be ineffectual. To encourage these critical decision makers to support reforms on the ground, it is important that policymakers involve district attorneys and judges from the outset in reform planning and later in the implementation and evaluation of new policies and practices.

Conclusion

Collateral consequences of criminal convictions are legion and present significant and often insurmountable barriers for people with criminal histories to housing, public benefits, employment, and even certain civil rights well after sentence completion. The breadth of legislative reforms over the last six years to mitigate their impact suggests that policymakers have begun to recognize that many post-punishment penalties are too broadly applied and have questionable public safety benefits. Indeed, the reform efforts discussed in this report seem to reflect a growing acceptance among leaders across the political spectrum—and with the public at large—that rehabilitation, treatment, and education should be important goals of the criminal justice system. Research shows that recidivism is reduced and communities are made safer not by rendering the millions of people with criminal records second class citizens, but by supporting their transition and reintegration into the community.

While some recent reforms of collateral consequences are narrow in scope, difficult to access or enforce, and easily thwarted, the recognition that people who are caught up in the criminal justice system need assistance is a significant shift in perspective from the tough-on-crime policies of the past forty years. But when viewed collectively, these reforms indicate a criminal justice system on the cusp of embracing reentry and reintegration as guiding principles, and a society which accepts people with criminal records as full members capable of contributing to their families and communities.

Appendix A

COLLATERAL CONSEQUENCES REFORM LEGISLATION BY YEAR, 2009-2014

STATE	2009	2010	2011
ALABAMA			
ARKANSAS			2
CALIFORNIA		1	1
COLORADO		1	1
CONNECTICUT		1	
DELAWARE		1	3
DISTRICT OF COLUMBIA			
FLORIDA			1
GEORGIA			
HAWAII			
IDAHO			
ILLINOIS		3	1
INDIANA			1
IOWA			
KENTUCKY			1
LOUISIANA		2	
MARYLAND			
MASSACHUSETTS		1	
MICHIGAN			
MINNESOTA	1		
MISSISSIPPI		1	
MISSOURI			
NEBRASKA			
NEVADA			
NEW HAMPSHIRE		1	
NEW JERSEY	1		
NEW MEXICO		1	
NEW YORK	2	2	
NORTH CAROLINA			2
OHIO			1
OKLAHOMA			
OREGON			1
RHODE ISLAND		1	
SOUTH CAROLINA			
SOUTH DAKOTA	1	1	
TENNESSEE			
TEXAS			1
UTAH		1	
VERMONT			
WASHINGTON			3
WEST VIRGINIA			
WYOMING			1
TOTAL	5	18	20

2012	2013	2014	TOTAL
	1	1	2
	2		4
1	2	6	11
1	5	3	11
		1	2
1	1	3	9
1		1	2
			1
1	1	2	4
1	1		2
	1		1
3	4	4	15
1	1	3	6
		1	1
			1
2	2	4	10
1	1	1	3
			1
1			1
	1	1	3
			1
	1	2	3
		1	1
	2		2
		4	5
	1	3	5
			1
		1	5
1	2		5
1			2
		1	1
	1		2
	2		3
	1	1	2
			2
1		2	3
	6		7
1	1	3	6
		1	1
	1	1	5
1			1
		1	2
19	41	52	155

Appendix B

COLLATERAL CONSEQUENCES REFORM LEGISLATION BY STATE, 2009–2014

Alabama	HB 494	2013
	SB 108	2014
Arkansas	HB 1608	2011
	SB 806	2011
	HB 1470	2013
	HB 1638	2013
California	SB 1055	2010
	AB 1384	2011
	AB 2371	2012
	AB 218	2013
	AB 720	2013
	AB 1468	2014
	AB 1650	2014
	AB 2234	2014
	AB 2396	2014
	SB 1027	2014
	SB 1384	2014
Colorado	HB 1023	2010
	HB 1167	2011
	HB 1263	2012
	HB 1082	2013
	HB 1156	2013
	SB 123	2013
	SB 229	2013
	SB 250	2013
	HB 1047	2014
	SB 129	2014
	SB 206	2014
Connecticut	HB 5207	2010
	SB 153	2014
Delaware	HB 169	2010
	HB 177	2011
	SB 12	2011
	SB 59	2011
	HB 285	2012
	HB 10	2013
	HB 134	2014
	HB 167	2014
	SB 217	2014
District Of Columbia	B19- 889	2012
	B20-642	2014
Florida	SB 146	2011
Georgia	HB 1176	2012
	HB 349	2013
	SB 365	2014
	SB 845	2014
Hawaii	HB 2515	2012
	HB 1059	2013
Idaho	S 1151	2013
Illinois	HB 5214	2010
	SB 760	2010
	SB 3295	2010
	HB 297	2011
	HB 5771	2012
	SB 3349	2012
	SB 3458	2012
	HB 1548	2013
	HB 3010	2013
	HB 3061	2013

Illinois	SB 1659	2013
	HB 4304	2014
	HB 5701	2014
	HB 5815	2014
	SB 978	2014
Indiana	HB 1211	2011
	HB 1033	2012
	HB 1482	2013
	HB 1268	2014
	HB 1155	2014
	SB 236	2014
Iowa	SF 383	2014
Kentucky	HB 463	2011
Louisiana	HB 102	2010
	SB 927	2010
	HB 295	2012
	SB 403	2012
	HB 219	2013
	SB 71	2013
	HB 8	2014
	HB 55	2014
	HB 505	2014
	HB 1273	2014
Maryland	HB 708	2012
	SB 4	2013
	HB 79	2014
Massachusetts	SB 2583	2010
Michigan	HB 5162	2012
Minnesota	HF 1301	2009
	SF 523	2013
	HF 2576	2014
Mississippi	HB 160	2010
Missouri	SB 118	2013
	HB 1665	2014
	SB 680	2014
Nebraska	LB 907	2014
Nevada	SB 169	2013
	SB 395	2013
New Hampshire	HB 1533	2010
	HB 496	2014
	HB 1137	2014
	HB 1144	2014
	HB 1368	2014
New Jersey	A 4201	2009
	A 3598	2013
	AB 1999	2014
	AB 2295	2014
	AB 8071	2014
New Mexico	SB 254	2010
New York	AB 8178	2009
	S 56-B	2009
	AB 5462	2010
	AB 9706	2010
	SB 3553	2014

North Carolina	HB 641	2011
	SB 397	2011
	HB 1023	2012
	SB 33	2013
	SB 91	2013
Ohio	HB 86	2011
	SB 337	2012
Oklahoma	SB 1914	2014
Oregon	HB 3376	2011
	HB 2627	2013
Rhode Island	HB 7923	2010
	SB 357	2013
	SB 358	2013
South Carolina	HB 3184	2013
	SB 900	2014
South Dakota	HB 1123	2009
	HB 1105	2010
Tennessee	HB 2865	2012
	HB 1742	2014
	SB 276	2014
Texas	HB 351	2011
	HB 798	2013
	HB 1188	2013
	HB 1659	2013
	SB 107	2013
	SB 369	2013
	SB 1289	2013
Utah	HB 21	2010
	SB 201	2012
	HB 33	2013
	HB 15	2014
	HB 137	2014
	HB 145	2014
Vermont	HB 413	2014
Washington	HB 1793	2011
	SB 5168	2011
	SB 5423	2011
	HB 1284	2013
	HB 1651	2014
West Virginia	HB 4521	2012
Wyoming	SF 88	2011
	SF 53	2014

Appendix C

DISCRETE COLLATERAL CONSEQUENCES REFORM LEGISLATION, 2009-2014

Appendix D COLLATERAL CONSEQUENCES REFORM LEGISLATION BY REFORM TYPE,

STATE	EXPUNGEMENT OR SEALING REMEDIES					CERTIFICATES OF RECOVERY	OFFENSE DOWNGRADES	BUILDS RELIEF INTO THE PROCESS
	EXTENDS ELIGIBILITY	REDUCES WAITING PERIODS	CLARIFIES THE EFFECT	EXTENDS TO JUVENILE RECORDS	ALTERS THE BURDEN OF PROOF			
ALABAMA	SB 108 (2014)							HB 494 (2013) SB 108 (2014)
ARKANSAS	HB 1608 (2011) HB 1638 (2013)		HB 1638 (2013)		HB 1608 (2011) HB 1638 (2013)	SB 806 (2011)		HB 1608 (2011) HB 1470 (2013)
CALIFORNIA	AB 1384 (2011)		AB 2371 (2012)				AB 2371 (2012)	AB 2371 (2012)
COLORADO	SB 123 (2013) SB 129 (2014) SB 206 (2014)	HB 1167 (2011) HB 1082 (2013)	HB 1167 (2011) HB 1156 (2013) SB 123 (2013) SB 206 (2014)	HB 1082 (2013)	HB 1167 (2011) SB 229 (2013)		SB 250 (2013)	HB 1082 (2013) HB 1156 (2013) SB 123 (2013) SB 206 (2014)
CONNECTICUT						SB 153 (2014)		
DELAWARE		HB 169 (2010) SB 59 (2011)	HB 169 (2010)	HB 177 (2011) HB 285 (2012)				HB 134 (2014)
DISTRICT OF COLUMBIA	B19-889 (2012)	B19-889 (2012)				B19-889 (2012)		
FLORIDA								
GEORGIA	HB 1176 (2012)					HB 365 (2014)		HB 1176 (2012)
HAWAII	HB 2515 (2012)							
IDAHO							S 1151 (2013)	
ILLINOIS	SB 3295 (2010) SB 3458 (2012) HB 1548 (2013) HB 3061 (2013) HB 5815 (2014)			SB 978 (2014)		HB 5771 (2012)		HB 5214 (2010) SB 3349 (2012) HB 3010 (2013)
INDIANA	HB 1211 (2011) HB 1482 (2013)	HB 1155 (2014)	HB 1033 (2012) HB 1482 (2013)		HB 1155 (2014)		HB 1033 (2012)	
IOWA				SF 383 (2014)				
KENTUCKY								HB 463 (2011)
LOUISIANA	SB 927 (2010) SB 403 (2012) HB 55 (2014)		HB 55 (2014)					SB 71 (2013)
MARYLAND				HB 708 (2012) HB 79 (2014)				
MASSACHUSETTS		SB 2583 (2010)						
MICHIGAN								HB 5162 (2012)
MINNESOTA	HF 2576 (2014)			HF 2576 (2014)				HF 2576 (2014)
MISSISSIPPI	HB 160 (2010)							

AMELIORATES EMPLOYMENT-RELATED COLLATERAL CONSEQUENCES				ACCESS TO INFORMATION			DISCRETE COLLATERAL CONSEQUENCES
BAN THE BOX	REDUCES LICENSING RESTRICTIONS	REDUCES EMPLOYERS' RISK	INCENTIVIZES EMPLOYERS	PROVIDES INCREASED INFORMATION TO OFFENDERS	RESTRICTS INFORMATION AVAILABLE TO THIRD PARTIES	STATE TASK FORCES	
						SB 806 (2011)	SB 806 (2011)
AB 1650 (2014) AB 218 (2013)	AB 2396 (2014) SB 1384 (2014)		AB 1650 (2014)	SB 1055 (2010) AB 2243 (2014)	SB 1027 (2014)		AB 720 (2013) AB 1468 (2014)
HB 1263 (2012) SB 206 (2014)		HB 1023 (2010)		SB 123 (2013) SB 206 (2014)	HB 1047 (2014)		SB 123 (2013) SB 229 (2013)
HB 5207 (2010)							
HB 167 (2014)	SB 59 (2011)		HB 167 (2014)				SB 12 (2011) HB 10 (2013) SB 217 (2014)
B20-642 (2014)		B19-889 (2012)		B20-642 (2014)			
	SB 146 (2011)					SB 146 (2011)	
		HB 365 (2014)		HB 1176 (2012)	SB 845 (2014)		HB 349 (2013) SB 365 (2014)
				HB 1059 (2013)			
HB 5701 (2014)			SB 1659 (2013)			HB 297 (2011)	SB 760 (2010) HB 4304 (2014)
HB 1033 (2012) HB 1482 (2013)		HB 1482 (2013)			HB 1033 (2012)		HB 1155 (2014) HB 1268 (2014) SB 236 (2014)
	HB 295 (2012) HB 1273 (2014)	HB 505 (2014)			HB 55 (2014)		HB 102 (2010) HB 219 (2013) HB 8 (2014)
SB 4 (2013)							
SB 2583 (2010)		SB 2583 (2010)		SB 2583 (2010)	SB 2583 (2010)	SB 2583 (2010)	
HF 1301 (2009) SF 523 (2013)		HF 2576 (2014)			HF 2576 (2014)		

Appendix D COLLATERAL CONSEQUENCES REFORM LEGISLATION BY REFORM TYPE,

STATE	EXPUNGEMENT OR SEALING REMEDIES					CERTIFICATES OF RECOVERY	OFFENSE DOWNGRADES	BUILDING RELIEF INTO THE PROCESS
	EXTENDS ELIGIBILITY	REDUCES WAITING PERIODS	CLARIFIES THE EFFECT	EXTENDS TO JUVENILE RECORDS	ALTERS THE BURDEN OF PROOF			
MISSOURI	HB 1665 (2014)							SB 118 (2013)
NEBRASKA								
NEVADA		SB 169 (2013)						
NEW HAMPSHIRE	HB 1137 (2014)							
NEW JERSEY				AB 8071 (2014)				A 3598 (2013)
NEW MEXICO								
NEW YORK	S 56-B (2009)						S 56-B (2009)	S 56-B (2009)
NORTH CAROLINA	HB 1023 (2012)		SB 397 (2011) SB 91 (2013)	SB 397 (2011)		HB 641 (2011)		
OHIO	SB 337 (2012)	SB 337 (2012)		SB 337 (2012)		HB 86 (2011) SB 337 (2012)		
OKLAHOMA				SB 1914 (2014)				
OREGON	HB 3376 (2011)							HB 2627 (2013)
RHODE ISLAND						SB 358 (2013)		HB 7923 (2010)
SOUTH CAROLINA	HB 3184 (2013)							
SOUTH DAKOTA	HB 1105 (2010)		HB 1105 (2010)					
TENNESSEE	HB 2685 (2012) HB 1742 (2014)					SB 276 (2014)		
TEXAS	HB 351 (2011)	HB 351 (2011)						
UTAH	HB 21 (2010) SB 201 (2012) HB 33 (2013)	HB 21 (2010)						
VERMONT						HB 413 (2014)		
WASHINGTON				HB 1793 (2011) HB 1651 (2014)				
WEST VIRGINIA								
WYOMING	SF 88 (2011)							

AMELIORATING EMPLOYMENT-RELATED COLLATERAL CONSEQUENCES				ACCESS TO INFORMATION			DISCRETE COLLATERAL CONSEQUENCES
BAN THE BOX	REDUCES LICENSING RESTRICTIONS	REDUCES EMPLOYERS' RISK	INCENTIVIZES EMPLOYERS	PROVIDES INCREASED INFORMATION TO OFFENDERS	RESTRICTS INFORMATION AVAILABLE TO THIRD PARTIES	STATE TASK FORCES	
					HB 1665 (2014)		SB 680 (2014)
LB 907 (2014)							
						SB 395 (2013)	SB 169 (2013)
	HB 1368 (2014)					HB 1533 (2010) HB 1144 (2014)	HB 496 (2014)
AB 1999 (2014)				A 4201 (2009)			AB 2295 (2014)
SB 254 (2010)							
			AB 9706 (2010)	AB 9706 (2010)	AB 9706 (2010)		AB 8178 (2009) AB 5462 (2010) SB 3553 (2014)
SB 91 (2013)	SB 33 (2013)	HB 641 (2011)					SB 91 (2013)
	SB 337 (2012)	HB 86 (2011) SB 337 (2012)			SB 337 (2012)		SB 337 (2012)
SB 357 (2013)							
						SB 900 (2014)	
							HB 1123 (2009)
		SB 276 (2014)					
	HB 798 (2013) HB 1659 (2013)	HB 1188 (2013)	SB 369 (2013)		SB 107 (2013) SB 1289 (2013)		
					HB 145 (2014)		HB 33 (2013) HB 15 (2014) HB 137 (2014)
				HB 413 (2014)		HB 413 (2014)	
					HB 1793 (2011)		HB 1793 (2011) SB 5168 (2011) SB 5243 (2011) HB 1284 (2013)
							HB 4521 (2012)
					SF 53 (2014)		

ENDNOTES

1 Indeed, in describing the stigma caused by a criminal conviction, Chief Justice Earl Warren once observed that a felony conviction "imposes a status upon a person which not only makes him vulnerable to future sanctions through new civil disability statutes, but which also seriously affects his reputation and economic opportunities." See *Parker v. Ellis*, 362 U.S. 574, 593-94 (1960) (Warren, CJ, Black, Douglas & Brennan, JJ, dissenting).

2 Collateral consequences are civil consequences that arise from criminal convictions. For a definition, see *ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons, 3rd ed.* (2004) Standard 19-1.1. For information regarding the severity and reach of collateral consequences, see Wayne Logan, "Informal Collateral Consequences," *Washington Law Review* 88 (2013): 1104, noting that the effect of the collateral consequences can amount to a greater punishment than the original sentence. For information on how collateral consequences extend to an individual's family, see Donald Braman and Jenifer Wood, "From One Generation to the Next: How Criminal Sanctions Are Reshaping Family Life in Urban America," in Travis and Michelle Waul, eds., *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities* (Washington, DC: Urban Institute Press, 2003), 171-188; Barbara Mulé and Michael Yavinsky, "Saving One's Home: Collateral Consequences for Innocent Family Members," *New York University Review of Law and Social Change* 30 (2006): 689-699; Creasie Finney Hairston, Ph.D., "Families, Prisoners, and Community Reentry: A Look at Issues and Programs," in Vivian L. Gadsden, ed., *Heading Home: Offender Reintegration into the Family* 20-24 (Lanham, Maryland: American Correctional Association, 2003). Regarding collateral consequences impact on the community, see Shelli Balter Rossman, "Building Partnerships to Stengthen Offenders, Families, and Communities," in Travis and Waul, 2003, pp. 322-342. For collateral consequences' impact on African American communities in particular, see Dorothy E. Roberts, "The Social and Moral Cost of Mass Incarceration in African American Communities," *Stanford Law Review* 56 (2004): 1291-1305. See also Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (Buckingham, England: Open University Press, 2009). Regarding the impact of criminal conviction on an individual's economic prospects, see *Collateral Costs: Incarceration's Effect on Economic Mobility*, (Washington, DC: The Pew Charitable Trusts, 2010).

3 Collateral consequences are not limited to felony convictions. For a comprehensive discussion of the negative consequences of misdemeanor convictions, see Jenny Roberts, "Crashing the Misdemeanor System," *Washington and Lee Law Review* 70 (2013): 1090–1131. Also see Jenny Roberts, "Why Misdemeanors Matter: Defining Effective Advocacy in Lower Criminal Courts," *U.C. Davis Law Review* 45 (2011): 277–372; and Gabriel J. Chin, "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction," *University of Pennsylvania Law Review* 160 (2012): 1789, 1803-1815.

4 Depending on the nature of the felony, an individual with a felony conviction could face up to a six-year ban from New York public housing programs after serving their sentence. All convicted felons face at least a three-year ban from public housing. See the New York City Housing Authority's Department of Housing Applications Manual Exhibit F (October 15, 2013) at reentry.net/ny/library/folder.132960-NYCHA_Public_Housing_Regulations. For example, if an individual was convicted of a Class D felony in 1998, was released from prison in 2000, and released from parole on October 1, 2004, he or she would not be eligible for public housing until October 1, 2009—five years after completing the full sentence (i.e., upon termination of parole supervision).

5 For rules regarding stevedores, see N.Y. Unconsolidated Laws §9821; For rules regarding real estate agents, see N.Y. Real Prop § 440-a; For rules regarding bingo operators, see N.Y. Exec. Law, section 435 (2)(c)(l). This bar extends to bingo callers, see NYCRR § 4820.35. Regarding educational assistance, individuals convicted of drug offenses are ineligible for further federal student aid if the offense was committed while the individual was receiving aid. See https://studentaid.ed.gov/eligibility/criminal-convictions#drug-convictions.

6 The Sentencing Project, *A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits* (Washington, DC: 2013), 2, Table 1. The programs involved are the Temporary Assistance to Needy Families (TANF) program and the Supplemental Nutrition Assistance Program (SNAP)—more commonly referred to as "food stamps." As of 2014, 13 states have fully opted out of such a ban regarding TANF benefits and 16 states have fully opted out of the ban regarding SNAP benefits.

7 See note 9 for case law to this effect. Regarding the determination that collateral consequences are "civil," the Supreme Court has laid out several tests to determine when a penalty is criminal or civil. See for example, *Trop v. Dulles*, 356 U.S. 86, 96 (1958) or *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963). The controlling test is a two-pronged inquiry set forth in *U.S. v. Ward,* 448 U.S. 242, 248-250 (1980), which instructs courts to first determine legislative intent as to whether a sanction is to be classified as civil or criminal; and second, if civil, to employ a seven-factor analysis articulated in *Kennedy* to determine whether the purpose or effect of the sanction is so punitive as to be considered criminal. Note that only the "clearest proof" on the second inquiry can override legislative intent. See *Hudson v. U.S.*, 522 U.S. 93, 100 (1997). Other dispositive factors that courts have considered to determine whether a consequence is criminal or collateral (and therefore civil) include whether the court has the power to impose or limit the collateral consequence at issue, or, conversely, if it is beyond the control and responsibility of the court. See for example, *El-Nobani v. United States*, 287 F.3d 417, 421 (6th Cir. 2007). For further discussion of the jurisprudence that has developed around collateral consequences generally see, Margaret Colgate Love, "Collateral Consequences After *Padilla v. Kentucky*: From Punishment to Regulation," *St. Louis Public Law Review* 31, no. 1 (2011): 87, 96-101; and Michael Pinard, "An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals," *Boston University Law Review* 86 (2006): 639-647.

8 See Jeremy Travis, "Invisible Punishment: An Instrument of Social Exclusion," in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, edited by Marc Mauer and Meda Chesney-Lind (New York, NY: The New Press, 2002), 15-17.

9 See for example, *Fruchtman v. Kenton*, 531 F.2d 946, 949 (9th. Cir. 1976) in which the U.S. Court of Appeals for the Ninth Circuit held that "collateral consequences flowing from a guilty plea are so manifold that any rule requiring a district judge to advise a defendant…would impose an unmanageable burden on the trial judge." In *United States v. Yearwood*, 863 F.2d 6, 8 (4th Cir. 1988), the U.S. Court of Appeals for the Fourth Circuit decided that requiring defense counsel to advise defendants on collateral consequences would be similarly burdensome. Also see *ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons 3rd ed.* (2004) Standard 19-2.1 Commentary for a discussion on the difficulty of determining the collateral consequences for a particular offense.

10 Anthony Thompson, "Navigating the Hidden Obstacles to Ex-Offender Reentry," *Boston College Law Review* 45 (2004): 255, 273.

11 In *Padilla v. Kentucky,* 559 U.S. 356, 359 (2010), the Supreme Court held that a criminal defense lawyer is constitutionally required to advise a noncitizen client considering a guilty plea that deportation will be an almost certain result of a guilty plea and conviction. Lower courts have since considered applying *Padilla* to other "status-generated consequences," such as sex offender registration. For a discussion on this see Margaret Colgate Love, "Collateral Consequences After *Padilla v. Kentucky*: From Punishment to Regulation," *St. Louis Public Law Review* 31(1) (2011) 87, 105-111. Also see, Anthony Thompson, "Navigating the Hidden Obstacles to Ex-Offender Reentry," *Boston College Law Review* 45 (2004): 255, 273.

12 For a discussion on the "invisibility" of collateral consequences, see Jeremy Travis, "Invisible Punishment: An Instrument of Social Exclusion" in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, edited by Marc Mauer and Meda Chesney-Lind (New York, NY: The New Press, 2002) 15-17.

13 For a discussion about the growth in concern about prisoner reentry and attendant initiatives, see Michael Pinard, "An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals," *Boston University Law Review* 86 (2006): 623, 649-658; Michael Pinard, "Reflections and Perspectives on Reentry and Collateral Consequences," *Journal of Criminal Law & Criminology* 100, no.3 (2010): 1213, 1219-22; Amy L. Solomon, "In Search of a Job: Criminal Records as Barriers to Employment," *National Institute of Justice Journal* No. 270 (2012): 46, 48. For recent opinion polls on criminal justice issues see Jill Mizell, *An Overview of Public Opinion and Discourse on Criminal Justice Issues* (New York: The Opportunity Agenda, 2014), 19-23. For example, The Opportunity Agenda found that 69 percent of Americans felt that the criminal justice system "needed major improvements" or "a complete redesign," and that nearly half of Americans believe society is better served by a greater effort to rehabilitate people convicted of crimes. See Mizell, 20, 23. The report also cites a Hindelang Criminal Justice Research Center Study finding that, in 2010, 64 percent of respondents reported that their preferred approach to lowering crime was by adding "more money and effort" to "attacking the social and economic problems that lead to crime through better education and job training," compared to only 32 percent who preferred "more money and effort" to "deterring crime by improving law enforcement with more prisons, police, and judges." In 1990, only 51 percent of respondents favored the former approach. Ibid. at 24.

14 For research that discusses how employment, education, health, and housing are critical risk factors of reoffending, see M. Makarios et. al., "Examining the Predictors of Recidivism Among Men and Women Released From Prison In Ohio," *Criminal Justice and Behavior* 37, no.12 (2010).

15 For remarks in 2011, see Attorney General Eric Holder Letter to State Attorneys General, April 18, 2011, available at csgjusticecenter.org/wp-content/uploads/2014/02/Reentry_Council_AG_Letter.pdf. For remarks in 2014, see Attorney General Eric Holder remarks at the National Association of Attorneys General Winter Meeting, February 25, 2014, available at http://www.justice.gov/iso/opa/ag/speeches/2014/ag-speech-1402251.html.

16 See Attorney General Eric Holder remarks on Criminal Justice Reform at Georgetown University Law Center, February 11, 2014, available at http://www.justice.gov/iso/opa/ag/speeches/2014/ag-speech-140211.html.

17 For a contemporaneous example of scholarship underpinning this shift, see Robert Martinson, "What Works? Questions and Answers About Prison Reform" *The Public Interest* 35 (1974): 22, 22-23. For more background, see Kevin R. Reitz, "The Disassembly and Reassembly of U.S. Sentencing Practices," in *Sentencing and Sanctions in Western Countries* (Michael Tonry & Richard S. Frase, eds., Oxford University Press, 2001), 238-244; Bureau of Justice Assistance, *National Assessment of Structured Sentencing* (Washington DC: BJA, 1996), 5-18.

18 Kevin R. Reitz, "The Disassembly and Reassembly of U.S. Sentencing Practices," 238-244. For an overview of the expanding penal code, see Douglas Husak, *Overcriminalization: The Limits of The Criminal Law* (Oxford, UK: Oxford University Press, 2009); also see Stephen F. Smith, "Overcoming Overcriminalization," *Journal Of Criminal Law & Criminology* 102, no.3 (2012): 537, 538-543 and Paul J. Larkin, "Public Choice Theory and Overcriminalization," *Harvard Journal of Law & Public Policy* 36, no.2 (2013): 715, 723-735. For example, on the federal level, the Congressional Research Service reported that between 2008 and 2013, Congress added 439 offenses to the federal criminal code. See Memorandum to Crime, Terrorism, Homeland Security & Investigations Subcommittee (June 23, 2014) at http://freebeacon.com/wp-content/uploads/2014/08/CRS-Report-Up-Dated-New-Crimesfinal-1.pdf. For a description of zero-tolerance policing practices in New York City, see Jeffrey Fagan and Garth Davies, "Street Stops and Broken Windows: Terry, Race, and Disorder in New York City," *Fordham Urban Law Journal* 28, no.2 (2000): 457, 470-2 and 475-8; Also see Jeffrey Fagan, Valerie West and Jan Holland, "Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods," *Fordham Urban Law Journal* 30, no.5 (2003): 1551, 1563-1566 and K. Babe Howell "Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing," *New York University Review of Law & Social Change* 33 (2009): 271, 276. For information on the introduction of stiffer penalties, see Ram Subramanian and Ruth Delaney, *Playbook for Change? States Reconsider Mandatory Sentences* (New York: Vera Institute of Justice, 2014), 6.

19 The number of individuals with state criminal history records was 100.5 million. This number was then reduced by 30 percent to account for individuals who have records in multiple states. The resulting 70.2 million figure is likely an underestimation due to some states' policies that do not require fingerprinting for low-level offenders or that do not include records of juvenile offenders, and due to the exclusion of individuals with only federal criminal records. The methodology was replicated from the one used by Michelle Rodriguez and Maurice Emsellem, *65 Million Need Not Apply: The Case For Reforming Criminal Background Checks For Employment* (New York, NY: The National Employment Law Project, 2011), endnote 2. For the number of individuals under correctional supervision in 1985, see Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 1985* (Washington, DC: BJA, 1987). For figures reporting on 2012, see Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012* (Washington, DC: BJA, 2014), Table 1. See also Lauren E. Glaze and Erinn J. Herberman, *Correctional Populations in the United States, 2012* (Washington, DC: Bureau of Justice Statistics, 2013) Table 2. For data on how the prisoner reentry population has increased in recent years, see Christy A. Visher and Jeremy Travis, "Life on the Outside: Returning Home after Incarceration," *The Prison Journal* 91 (2011): 102S.

20 For the prevalence of arrest histories, see Robert Brame et al., "Cumulative Prevalence of Arrest From Ages 8 to 23 in a National Sample," *Pediatrics* 129(1) (2011): 21-27. For the total number of arrests estimated by the FBI, see John R. Emshwiller, "As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime," Wall Street Journal, August 18, 2014.

21 Margaret Colgate Love, "Starting Over With A Clean Slate: In Praise of A Forgotten Section Of The Model Penal Code," *Fordham Urban Law Journal* 30, no.5 (2003): 1705, 1716-7.

22 Ben Geiger, "The Case for Treating Ex-Offenders As A Suspect Class," *California Law Review* 94, no.4 (2006): 1191, 1194-1206. Also see Margaret Colgate Love, "Starting Over With A Clean Slate: In Praise of A Forgotton Section Of The Model Penal Code," *Fordham Urban Law Journal* 30, no.5 (2003): 1705, 1716-7 and Kathleen M. Olivares et al., "The Collateral Consequences of a Felony Conviction: A National Study of State Legal Codes 10 Years Later," *Federal Probation* 60 (1996): 10, which documents the increase in state disabilities over a ten-year period between 1986 and 1996.

23 For a discussion of the penological explanations for collateral consequences see Nora V. Demleitner, "Preventing Internal Exile: The Need for Restrcitions on Collateral Sentencing Consequences," *Stanford Law & Policy Review* 11 (1999): 153, 159-60.

24 Gabriel J. Chin, "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction," *University of Pennsylvania Law Review* 160 (2012): 1789.

25 See note 2.

26 Michael Pinard, "An Integrated Perspective On The Collateral Consequences Of Criminal Convictions And Reentry Issues Faced By Formerly Incarcerated Individuals," *Boston University Law Review* 86 (2006): 623, 634-6; Also see Gabriel Chin, "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction," *University of Pennsylvania Law Review* 160 (2012): 1789, 1799-1802.

27 Wayne A. Logan, "Informal Collateral Consequences," *Washington Law Review* 88 (2013).

28 Regarding the long shadow of a criminal record, see ibid. at 1104-5 and 1107-1109. Regarding technologies impact on the accessibility of criminal history information, see note 37.

29 For a discussion of how conditions of confinement and community supervision became more punitive, see Anthony Thompson, "Navigating the Hidden Obstacles to Ex-Offender Reentry," *Boston College Law Review* 45 (2004): 255, 268-72. For information regarding the number of releases from state and federal prison, see E. Ann Carson and Daniela

Golinelli, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012* (Washington, DC: Bureau of Justice Statistics, 2013), 4, Table 2. For information regarding the number of releases from community supervision, see Laura M. Maruschak and Thomas P. Bonczar, *Probation and Parole in the United States, 2012* (Washington, DC: Bureau of Justice Statistics, 2013) 6, Table 4 and 9, Table 6. For information regarding the methodology with which the 2012 jail release number was calculated, see Todd D. Minton, *Jail Inmates at Midyear 2012 – Statistical Tables* (Washington DC: BJS, 2013) 4, 8, 13. In the methodology section, Minton outlines that jail turnover rates were calculated by adding admissions and releases and then dividing this number by the average daily population (ADP). The weekly turnover rate and ADP were obtained from Table 7. The admissions figure was ascertained by dividing the yearly admissions total given on page 4 by fifty-two to arrive at a weekly admissions total. The number of weekly releases was calculated using the aforementioned formula and by multiplying this number by fifty-two to give the number of yearly releases. For information regarding prisoner reentry needs and challenges, see for example, Jeremy Travis, Amy Solomon and Michelle Waul, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry* (Washington DC: The Urban Institute, 2001) at http://www.urban.org/UploadedPDF/from_prison_to_home.pdf. For the barriers facing individuals upon reentry, see note 29; Devah Pager, Marked: Race, Crime and Finding Work in an Era of Mass Incarceration (Chicago, IL: University of Chicago Press, 2007), 59; and Talia Sandwick et al., Making the Transition: Rethinking Jail Reentry in Los Angeles County (New York: Vera Institute of Justice, 2013). For information regarding jail reentry needs and challenges, see Jim Parsons, "Addressing the Unique Challenges of Jail Reentry," in *Offender Reentry: Rethinking Criminology and Criminal Justice*, edited by Matthew S. Crow and John Ortiz Smykla (Burlington, MA: Jones & Bartlett Learning, 2014) and Talia Sandwick et al., *Making the Transition: Rethinking Jail Reentry in Los Angeles County* (New York: Vera Institute of Justice, 2013).

30 For research that discusses specific risk factors for reoffending, see for example, M. Makarios et. al., "Examining the Predictors of Recidivism Among Men and Women Released From Prison In Ohio," *Criminal Justice and Behavior* 37, no.12 (2010) 1377-1391. Regarding reentry challenges and needs, see note 29.

31 See Jeffrey Fagan, Valerie West and Jan Holland, "Reciprocal Effects Effects of Crime and Incarceration in New York City Neighborhoods," *Fordham Urban Law Journal* 30, no.5 (2002): 1551, 1552-1553. Also see Jeffrey Fagan and Garth Davies, "Street Stops and Broken Windows: Terry, Race, and Disorder in New York City," *Fordham Urban Law Journal* 28, no.2 (2000): 457, 473-4.

32 Regarding recidivism rates, 67.8 percent and 76.6 percent of state prisoners released in 2005 in 30 states reoffended within three or five years of release, respectively. See Bureau of Justice Statistics (BJS), *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (Washington, DC: BJS, 2014). Between the 2003 Serious and Violent Offender Reentry Initiative (SVORI) and the 2009 Second Chance Act, $350 million of federal funding has been allocated to support state and local programming aimed at improving the reentry outcomes for released prisoners and other ex-offenders in a variety of different areas— i.e., criminal justice, employment, education, health, and housing. As of April 2013, BJA and OJJDP had awarded nearly 500 Second Chance Act grants to state, local, and tribal government agencies and nonprofit organizations across 48 states and the District of Columbia, totaling nearly $250 million. The grantees served more than 11,000 participants in pre-release programs and nearly 9,500 participants in post-release programs from July 2011 to June 2012. See National Reentry Resource Center, "The Second Chance Act: The First Five Years," April 23, 2013, http://csgjusticecenter.org/nrrc/posts/the-second-chance-act-the-first-five-years/; and RTI International and the Urban Institute, *The Multi-site Evaluation of SVORI: Summary and Synthesis* (Washington, DC: The Urban Institute, 2009), http://www.urban.org/uploadedpdf/412075_evaluation_svori.pdf.

33 See for example, Bronx Defenders, *Civil Action Practice* at http://www.bronxdefenders.org/our-work/civil-action-practice/. Also see the organizational and practice description of The Neighborhood Defender Service of Harlem at http://www.ndsny.org/, and the description of the civil legal services division of The Public Defender Service of the District of Columbia at http://www.pdsdc.org/PDS/CivilLegalServices.aspx. Regarding the incorporation of civil defense strategies into criminal defense services generally, see Michael Pinard, "Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering," *Fordham Urban Law Journal* 31, (2004): 1067.

34 Regarding corrections department's implementation of programming that relates to post-release risks and needs, see for example Florida Department of Corrections' Bureau of Transition and Substance Abuse Treatment Services, http://www.dc.state.fl.us/orginfo/SubAbuse/index.html; Georgia Department of Corrections' Re-Entry Partnership Housing program, http://www.dca.state.ga.us/housing/specialneeds/programs/rph.asp; and Indiana Department of Corrections' Reentry Programs page, http://www.in.gov/idoc/2799.htm.

35 In recent years, for example, states such as New York, North Carolina, Maryland, and Ohio have begun to compile and inventory collateral consequences Also, the American Bar Association—through a contract with the National Institute of Justice and authorized by the federal 2007 Court Security Improvement Act—is currently undertaking the herculean task of putting together a comprehensive compendium of all collateral consequences for both state and federal offenses in each of the 50 states, the U.S. territories and the District of Columbia. And in 2009, the National Conference of Commissioners on Uniform State Laws authorized the Uniform Collateral Consequences of Conviction Act (UCCCA), urging states to engage in their own efforts to compile collateral consequences into a single document, undertake steps to ensure defendants are appropriately notified of relevant collateral consequences at all stages of the criminal process (i.e., at pretrial, sentencing, and release/discharge), and to adopt mechanisms to mitigate those consequences that impact areas known to be critical to successful reentry such as those related to employment, education, housing, public benefits, and occupational licensing.

36 National Association of Criminal Defense Lawyers, *Collateral Damage: America's Failure to Forgive or Forget in the War on Crime: A Roadmap to Restore Rights and Status After Arrest or Conviction* (Washington, DC: NACDL, 2014), 22.

37 For an overview of this phenomenon, see James Jacobs and Tamara Crepet, "The Expanding Scope, Use, and Availability of Criminal Records," *NYU Journal of Legislation & Public Policy* 11 (2008): 177. For an overview of commercial criminal record databases, see SEARCH, The National Consortium for Justice Information and Statistics, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (Sacramento, CA: SEARCH Group).

38 A. Blumstein and K. Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," *Criminology* 47, no. 2 (2009): 328-331.

39 National Association of Criminal Defense Lawyers, *Collateral Damage: America's Failure to Forgive or Forget in the War on Crime: A Roadmap to Restore Rights and Status After Arrest or Conviction* (Washington, DC: NACDL, 2014), 56.

40 Particularly for those who were exonerated of the underlying crime, expungement plays a large role in preventing future offending. For these individuals, not having their record cleared after exoneration is a significant predictor of criminal activity post-release, and the effect is strongest among those who had no prior record before being wrongfully convicted. This is consistent with labeling theory, which posits that a person's status as a former criminal has a stigmatizing effect, regardless of whether that status was wrongfully attached. One study followed 118 exonerated individuals in four states—Florida, Illinois, New York, and Texas. The study's authors described expungement as "extremely difficult" to obtain in Florida, Illinois, and Texas, but "substantially better" in New York. Unsurprisingly, post-exoneration offending in New York is "substantially lower" than in the other three states. See Amy Shlosberg et al., "Expungement and Post-exoneration Offending," *Journal of Criminal Law & Criminology* 104, no. 2 (2014). For further information on labeling theory and its effect, see J. Bernburg, M. Krohn and C. Rivera, "Official Labeling, Criminal Embeddedness, and Subsequent Delinquency: A Longitudinal Test of Labeling Theory," *Journal of Research in Crime and Delinquency* 43 (2006).

41 Empirical research demonstrates that after approximately seven years there is little or no difference in the risk of future offending between those with a criminal record and those without. However, mitigating factors, like age of offense, can yield reduced risk of reoffending after much shorter time lapses in many instances. For more information, see A. Blumstein and K. Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," *Criminology* 47, no. 2 (2009); M.C. Kurlychek, R. Brame, and S.D. Bushway, "Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement," *Crime & Delinquency* 53, no. 1 (2007): 64-83; and M.C. Kurlychek, R. Brame, and S.D. Bushway, "Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?" *Criminology & Public Policy* 5, no. 3 (2006).

42 A 2013 article detailed the experiences of several individuals with criminal histories, offering insight into how these people navigated their status. For instance, one individual reported fearing that he would "look like a liar" if he failed to disclose his sealed records to an employer, while another individual was unsure exactly which employers counted as "governmental" for the purposes of securing access to her sealed records, thus feeling compelled to disclose. According to the author, their criminal histories "created multiple selves, but offered no way to manage them in practical terms." See Amy Myrick, "Facing Your Criminal Record: Expungement and the Collateral Problem of Wrongfully Represented Self," *Law & Society Review* 47 (2013): 73, 92. See also Megan C. Kurlychek, Robert Brame, and Shawn D. Bushway, "Enduring Risk? Old Criminal Records and Short-Term Predictions of Criminal Involvement," *Crime & Delinquency* 53(1) (2007).

43 For information regarding juvenile brain chemistry, see Laurence Steinberg, "Should the science of adolescent brain development inform public policy?," *American Psychologist* 64, no. 8 (2009): 742 ("There is incontrovertible evidence of significant changes in brain structure and function during adolescence."); Elizabeth R. Sowell et al., "*In vivo* evidence for post-adolescent brain maturation in frontal and striatal regions," *Nature Neuroscience* 2 (1999): 860. As an example of formal criminal justice acknowledgment of reduced juvenile culpability, see *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010) ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence."). For information regarding juveniles' reduced culpability, see Laurence Steinberg and Elizabeth S. Scott, "Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty," *American Psychologist* 58, no. 12 (2003): 1011-4.

44 The court and all law enforcement agencies must expunge the conviction records, and all state agencies must remove entries made as a result of the conviction and reverse administrative actions taken against a person as a result of the conviction. Access is only granted to state and local law enforcement agencies, for employment purposes only. See G.S. § 15A-151(a)(6). However, the person's DNA will remain in the state DNA databank.

45 Legal cases frequently involve a "burden of proof"—the level of proof necessary for one side to prevail in a particular proceeding. The burden of proof can vary as to how much proof is required and also as to which party is tasked with doing the proving, or "bearing" the burden of proof. In civil cases, the burden of proof is a "preponderance of the evidence" (also referred to as a "balance of the probabilities"), in which the winning side must show that his or her claims are more likely true than not true—a standard often characterized as proving something more than 50 percent likely. For criminal cases the standard is much higher. To succeed in a criminal case, the prosecutor must prove a defendant's guilt "beyond a reasonable doubt." A third standard—"clear and convincing evidence"—is an intermediate standard of proof higher between the civil and criminal standards, and is often required in quasi-criminal cases or when a person's civil rights are in jeopardy, such as cases seeking to terminate parental rights or have someone committed to a mental institution. See Ronald J. Allen and Alex Stein, "Evidence, Probability and the Burden of Proof," *Arizona Law Review* 55 (2013) and Alex Stein, "Constitutional Evidence Law," *Vanderbilt Law Review* 61 (2008).

46 For an analysis of the myriad challenges facing convicted felons, see Christopher Uggen, Jeff Manza, and Angela Behrens, "'Less than the average citizen': stigma, role transition and the civic reintegration of convicted felons," in Shadd Maruna and Russ Immarigeon, eds., *After Crime and Punishment : Pathways to Offender Reintegration* (Portland: Willan Publishing, 2004), 258-290. Also see Jeremy Fagan and Tracey L. Myers, "Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities," *Ohio State Journal of Criminal Law* 6 (2008): 210 for insights into how the stigma of felony conviction reduces individuals' incentives to invest in their own human capital.

47 This is consistent with research that has demonstrated that positive reinforcement and the use of incentives are components of effective behavior modification. See Vera Institute of Justice, *The Potential of Community Corrections to Improve Safety and Reduce Incarceration* (New York: Vera Institute of Justice, 2013), 19.

48 Besides helping individuals avoid criminal convictions and the attendant collateral consequences, this strategy also reduces the future burden on those communities to which these individuals return. For information regarding how sentencing changes today can reduce the number of individuals with criminal records in the future, see John Schmitt and Kris Warner, *Ex-offenders and the Labor Market* (Washington, DC: Center for Economic and Policy Research, 2010), 3.

49 Marlaina Freisthler and Mark Godsey, "Going Home To Stay: A Review of Collateral Consequences, Post Incarceration Employment, and Recidivism in Ohio," *University of Toledo Law Review* 36 (2005): 525, 529 ("So strong is the inverse correlation between employment and recidivism that employment is considered a rehabilitative necessity."). Also see Jeffrey D. Morenoff and David J. Harding, *Final Technical Report: Neighborhoods, Recidivism, and Employment Among Returning Prisoners* (Ann Arbor: University of Michigan, October 2011, prepared under grant number 2008-IJ-CX-0018); and M.C. Kurlychek, R. Brame, and S.D. Bushway, "Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement," *Crime & Delinquency* 53, no. 1 (2007): 66 ("an abundance of criminological research suggests that one of the key social bonds that help past offenders lead law abiding lives in the attainment of stable employment").

50 James Jacobs and Tamara Crepet, "The Expanding Scope, Use, and Availability of Criminal Records," *New York University Journal of Legislation and Public Policy* 11 (2008).

51 As examples of formal barriers to employment, New York bars those with certain misdemeanor convictions from working as a home health aide, and Texas prohibits someone with any of a number of criminal convictions from working in a facility serving the elderly, terminally ill, or people with disabilities. See N.Y. Public Health Law § 2899(6) and 2899–a(1), N.Y. Executive Law §§ 845–b(2) and 845-b(5)(b); Tex. Health & Safety Code Ann. § 250.006. On the disinclination of employers to hire individuals with criminal records more generally, see Harry J. Holzer et al., Will Employers Hire Former Offenders?: Employer Preferences, Background Checks, and Their Determinants, in IMPRISONING AMERICA: THE SOCIAL EFFECTS OF MASS INCARCERATION 205, 208–10 (Mary Pattillo et al. eds., 2004). Research also makes clear that even employers reluctant to acknowledge a policy of not hiring individuals with a criminal record show a marked disinclination in practice to actually hire such a person. See Devah Pager & Lincoln Quillian, "Walking the Talk?: What Employers Say Versus What They Do," *American Sociological Review* 70, no.3 (2005).

52 Madeline Neighly and Maurice Emsellem, *WANTED: Accurate FBI Background Checks for Employment* (New York: National Employment Law Project, 2013).

53 See Ram Subramanian, Rebecka Moreno, and Sharyn Broomhead, *Recalibrating Justice: A Review of 2013 State Sentencing and Corrections Trends* (New York: Vera Institute of Justice, 2014). Also see National Employment Law Project, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies to Reduce Unfair Barriers to Employment of People with Criminal Records* (New York: NELP, 2014).

54 This is a significant provision to the law because, even as ban the box laws proliferate, the efficacy of such laws is open to question. Most rely on private enforcement through individual complaints.

55 According to the Society for Human Resource Management, the two most

common reasons for not hiring ex-offenders are the risk of a crime being committed at work and the fear of a negligent hiring lawsuit. See *Background Checking—The Use of Criminal Background Checks in Hiring Decisions*, Jul. 19, 2012, available at http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx#sthash.skBL4NA0.dpuf.

56 See note 37.

57 See note 9.

58 Jenny Roberts, "Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts," *UC Davis Law Review* 45 (2011): 277.

59 In the second scenario, the person would be charged with the underlying offense, and then also with the offense of using criminal records to commit a crime against someone.

60 For background information on immigration-related collateral consequences, see Yolanda Vásquez, "Realizing Padilla's Promise: Ensuring Noncitizen Defendants are Advised of the Immigration Consequences of a Criminal Conviction," *Fordham Urban Law Journal* 39 (2011). For background information on Medicaid eligibility for individuals who have been incarcerated, see Bazelon Center for Mental Health Law, *The Effect of Incarceration on Medicaid Benefits for People with Mental Illnesses* (Washington, DC: Bazelon Center for Mental Health, 2009). Social security income benefits are terminated when an individual has been incarcerated for at least twelve months. Once SSI benefits are lost, Medicaid eligibility will often also be lost and the individual will be required to apply again as a new applicant. For background information on family-related issues, see Philip M. Genty, "Damage to Family Relationships as a Collateral Consequence of Parental Incarceration," *Fordham Urban Law Journal* 30 (2003). For information regarding financial health and economic mobility, see *Collateral Costs: Incarceration's Effect on Economic Mobility*, (Washington, DC: The Pew Charitable Trusts, 2010); Taja-Nia Y. Henderson, "New Frontiers in Fair Lending: Confronting Lending Discrimination Against Ex-Offenders," *New York University Law Review* 80 (2005): 1237.

61 For research that addresses the affects of employment, housing and educational opportunities on recidivism, see M. Makarios et. al., "Examining the Predictors of Recidivism Among Men and Women Released From Prison In Ohio," *Criminal Justice and Behavior* 37, no.12 (2010): 1377-1391. See also A. Blumstein and K. Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," *Criminology* 47, no. 2 (2009): 331 (noting that it is "well established" employment is powerful predictor desistance). For information regarding research on criminal activity and engagement in the political process, see Reuven Ziegler, "Legal Outlier, Again? U.S. Felon Suffrage: Comparative and International Human Rights Perspectives," *Boston University International Law Journal* 29 (2011): 208.

62 In many states, violent offenses are those that have at least one element involving force or the threat of force, or those that, even though no violence was used or threatened, involve a substantial risk that force or the threat of force could be used in the course of committing the offense. See Alice Ristroph, "Criminal Law In the Shadow of Violence," *Alabama Law Review* 62 (2011), noting that violence is often defined in the law in terms of risk or danger instead of in terms of threatened or actual injury.

63 For example, Indiana requires a hearing before sealing a record, and notice of the hearing must be publically posted in the courthouse. See Ind. Code Ann. § 5-14-3-5.5(c) (West).

64 See Louisiana Code of Criminal Procedure Art. 983.

65 This is a commonly accepted reality. For example, Minnesota Court's website warns: "expungement involves a lot of work with forms and attention to detail, and it takes at least four months to complete the process" http://www.mncourts.gov/selfhelp/?page=328.

66 See Amy Myrick, "Facing Your Criminal Record: Expungement and the Collateral Problem of Wrongfully Represented Self," *Law & Society Review* 47 (2013): 73–104 for narratives of several expungement seekers struggles with inaccurate, incomplete, missing records.

67 For example, in New Jersey, individuals must send—via certified mail and return receipt requested—their filing documents to upwards of nine different government bodies. See New Jersey State Courts, *How to Expunge Your Criminal Record and/or Juvenile* Record, http://www.judiciary.state.nj.us/prose/10557_expunge_kit.pdf.

68 See note 41, discussing empirically justified waiting period lengths and the nuanced nature of these studies. Additionally, risk of recidivism research is often based on data collected less than two years after the offense or conclusion of sentence, and thus do not necessarily speak to the imposition of 15 or 20 year waiting periods. See M.C. Kurlychek, R. Brame, and S.D. Bushway, "Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?" *Criminology & Public Policy* 5, no. 3 (2006): 4.

69 See for example Kentucky HB 463 (2011) or Illinois SB 3458 (2012).

70 Under the Fair Credit Reporting Act (FCRA), if adverse action is taken on the basis of a credit report, employer has to give person a "pre-adverse action disclosure" that includes a copy of the report. The same is not required of criminal background checks because it's not under the FCRA, but it is a best practice and many employers still give notice.

71 See Michael H. Jagunic, "The Unified, Sealed, Theory: Updating Ohio's Record-Sealing Statute for the Twenty-First Century," *Cleveland State Law Review*, 59 (2011):, 163. Indeed, video tutorials can be found online that detail how to search for and access an individual's criminal record. See Judge Eugene M. Hyman (ret.), "The Scarlet eLetter and Other Roadblocks to Redemption for Female Offenders," *Santa Clara Law Review* 54 (2014): 119, 149. For more information on commercial databases, see James Jacobs & Tamara Crepet, "The Expanding Scope, Use, and Availability of Criminal Records," *NYU Journal of Legislation & Public Policy* 11 (2008): 177, 185-86; and Jagunic (2011), pp. 161, 162-3.

72 Joy Radice, "Administering Justice: Removing Statutory Barriers to Reentry," *University of Colorado Law Review* 83 (2012): 715, 750. See also Michael H. Jagunic, "The Unified "Sealed" Theory: Updating Ohio's Record-Sealing Statute for the Twenty-First Century," *Cleveland State Law Review*, 59 (2011): 161, 170-72. This is particularly problematic in the context of juvenile records, where, in many jurisdictions, certain offenses are automatically sealed after the child turns eighteen. Private criminal records companies that copy juvenile records often do not have incentive to wipe these records one they are sealed. See Sarah Montana Hart, "The Collateral Consequences of Juvenile Publicity What the Montana Legislature Has Overlooked in the Youth Court Act," *Montana Lawyer* 36, no. 4 (2011): 7, 25.

73 For more information on the minimal regulations placed on private criminal record reporting companies, see James Jacobs & Tamara Crepet, "The Expanding Scope, Use, and Availability of Criminal Records," *NYU Journal of Legislation & Public Policy* 11 (2008): 177, 186-87.

74 Marsha Weissman, et al., *The Use of Criminal History Records in College Admissions Reconsidered* (New York: Center for Community Alternatives, 2013), 8-12.

75 Ibid., p. 15.

76 See note 49 for information on the unsound rationale for overly long waiting periods and note 16 for information how collateral consequences can increase risk of reoffending.

77 While the EEOC promulgates guidelines regarding employer use of criminal records that prohibits categorical exclusion of applicants with any criminal histories and encourages employers to look at all the circumstances surrounding a conviction (for example, its relevance to the job sought), liability under Title VII still requires an individual to prove that an employer's criminal records policy caused a disparate impact occurred based on race, color, religion, sex or national origin. See EEOC, "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (April 24, 2012), available at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

78 Marsha Weissman, et al.. *The Use of Criminal History Records in College Admissions Reconsidered* (New York: Center for Community Alternatives, 2013), 5-12.

79 Ariel Kramer, "3 New York Colleges to Drop Crime Queries for Applicants," *The New York Times*, October 26, 2014.

80 For example Missouri HB 1665 (2014) requires anyone who publishes or disseminates criminal history information online to remove the record upon the request of the subject of the record, and prohibits distributors from charging fees to remove or correct information. Also see Texas SB 1289 (2013), which requires companies that publish criminal history information to investigate complaints and remove erroneous entries.

81 For example, Connecticut HB 5207 (2010) prohibits state employers and licensing agencies from considering arrests not leading to conviction or "erased" conviction records.

82 See, for example, California AB 1650 (2014).

83 See The Opportunity Agenda, An Overview of Public Opinion and Discourse on Criminal Justice Issues (Washington, DC: The Opportunity Agenda, 2014), 7.

Acknowledgments

The authors would like to thank Margaret diZerega for her help with information about convictions and public housing. We would especially like to thank Patricia Connelly for her hard work in the editing process, and Peggy McGarry for her insight and guidance throughout the drafting process.

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Suggested Citation

Ram Subramanian, Rebecka Moreno, and Sophia Gebreselassie. *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014*. New York, NY: Vera Institute of Justice, 2014.

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