Collateral Consequences of Criminal Conviction: Five-State Resource Guide

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COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTION

FIVE-STATE RESOURCE GUIDE

INDIANA
NEW JERSEY
NEW YORK
OHIO
PENNSYLVANIA

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I. INTRODUCTION

Collateral consequences of criminal charges, sometimes called the “Four C’s,”¹ are the results of arrest, prosecution, or conviction that were not part of the sentence imposed. Collateral consequences, as distinguished from direct consequences such as imprisonment and fines,² include any unintended or unforeseen impact of the charge, even in the absence of a conviction or a trial. Another term used is collateral sanctions. The American Bar Association (“ABA”) defines a “collateral sanction as a legal penalty, disability or disadvantage, however denominated, that is imposed on a person automatically upon that person’s conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence.”³ While many collateral consequences attach as a result of felony conviction, they can also arise from far less

¹ In May 2005, Judith S. Kaye, Chief Judge of the State of New York, organized the Partners in Justice Colloquium, bringing together judges, practitioners and academics to promote a better understanding of the collateral consequences of criminal prosecutions in New York. One of the results of that colloquium was the formation of a Working Group and the creation of an online collaborative forum where judges, lawyers, and scholars can learn more about collateral consequences. The site, called the Four C’s, was created by The Working Group, in partnership with the Lawyering in the Digital Age Clinic at the Columbia University School of Law and is located at http://www2.law.columbia.edu/fourcs/about_us.htm.

² At least one commentator argues that real change will not occur as long as the “fictitious distinction between direct and collateral consequences” is upheld by the legal community. “The distinction … absolves courts of any responsibility to ensure that a defendant’s plea of guilt is actually knowing and intelligent.” Florian Miedel, Esq., Increasing Awareness of Collateral Consequences Among Participants of the Criminal Justice System: Is Education Enough? Partners in Justice, A Colloquium on Developing Collaborations Among Courts, Law School Clinical Programs and the Practicing Bar, Partners in Justice, A Colloquium on Developing Collaborations Among Courts, Law School Clinical Programs and the Practicing Bar, (May 9, 2005) available at courts.state.ny.us/ip/partnersinjustice/index.shtml.

³ American Bar Association, Criminal Justice Section Standards, Collateral Sanctions and Discretionary Disqualification of Convicted Persons available at http://www.abanet.org/crimjust/standards/collateral_blk.html (last visited Nov. 6, 2006). The ABA defines “discretionary disqualification” as a “penalty, disability or disadvantage, however denominated, that a civil court, administrative agency, or official is authorized but not required to impose on a person convicted of an offense on grounds related to the conviction.”
serious entanglements with the criminal justice system. In some instances, misdemeanor convictions, and even mere arrest, can result in severe and far-reaching consequences.

The legal system has not successfully managed the proliferation of collateral consequences. Because collateral consequences are administered largely outside the criminal justice system, they are viewed as mere civil regulation, rather than as criminal punishment. This problem is most striking in the context of guilty pleas. The Supreme Court has held that a guilty plea is invalid unless it is “knowing, voluntary and intelligent.” 4 However, while an individual pleading guilty must be advised of “direct” consequences such as imprisonment and fine, they need not be told that even though they might be walking out of court with only a fine and probation, they might be also walking out with a number of unforeseen restrictions – military service, higher education, public housing, professional license, drivers’ licenses, and voting are all impacted by a criminal conviction.

It remains to be seen whether having “friends in high places” might strike a decisive blow against the severity of the collateral consequences and disqualifications facing many offenders and the discouraging effect these legal barriers have on successful reentry and rehabilitation of offenders. In addition to Chief Judge Kaye’s Partners in Justice Colloquium 5 in New York, those friends in high places include Justice Anthony M. Kennedy, who in 2003 challenged the legal community to shift its “obsessive focus” from the process for determining guilt or innocence to considering what happens to a person once convicted, 6 and President George W. Bush, who proclaimed in his 2004 State of the Union Address that “America is the land of

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5 Partners in Justice, supra note 1.
6 Anthony M. Kennedy, Associate Justice, Supreme Court of the United States, Address at the ABA Annual Meeting (August 9, 2003) at 2-3 available at http://www.abanet.org/cecs.
second chances, and when the gates of the prison open, the path ahead should lead to a better life.”

The ABA responded to Justice Kennedy’s call to action by establishing the Justice Kennedy Commission, whose report to the 2004 Annual Meeting contains a series of policy recommendations that many consider a blueprint for sentencing and corrections reform. In 2005, the ABA received a two-year grant from the Open Society Institute to continue the work begun by the Justice Kennedy Commission. The Commission on Effective Criminal Sanctions was formed to continue the public discussion begun by the Justice Kennedy Commission, and to seek answers to some of the unanswered questions through examination of the actual experience of practitioners in a number of state jurisdictions. Based upon the information gathered at the hearings and other research, the Commission developed policy recommendations in six issue areas.

President Bush’s “second chance” proposal called for “a four-year, $300 million prisoner reentry initiative to expand job training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring, including from faith-based groups.” Due to the complexity of federal appropriations, it is difficult to determine the amount actually spent on the president’s second chance initiatives, but the agency charged with Prisoner Reentry Initiatives, the Bureau of Justice Assistance (“BJA”) administered by the Department of Justice’s (“DOJ”) Office of Justice Programs, identifies that only $5 million was appropriated in

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8 The issue areas are representation relating to the collateral consequences of conviction, incarceration and conviction, improvements in parole supervision, employment of people with criminal records, use of and access to criminal history information, and training in the exercise of discretion. See Executive Summary, ABA Commission of Effective Criminal Sanctions, Introduction and Summary of Recommendations (June 2006) available at http://meetings.abanet.org/webupload/commupload/CR209800/newsletterpubs/Introductorymaterial61506(2).pdf.
9 Bush, supra note 7.
2004, $10 million in 2005, and $5 million in 2006. This is far cry from the four-year goal of $300 million on “second chance” programs.

The Second Chance Act of 2005 is federal reentry legislation designed to ensure the safe and successful return of prisoners to the community. The bill has been introduced in both the U.S. House and Senate and is the first piece of comprehensive legislation to address the multiple challenges related to the return of incarcerated persons from prisons to their communities. The Second Chance Act is supported by over 200 organizations and enjoys broad bipartisan support, with 113 cosponsors in the House and 34 cosponsors in the Senate.

As members of the current "lame duck" session of the 109th Congress returned to Washington to elect leadership for the newly Democratic-controlled House and Senate, there are signals that the Senate may come closer to passing the Second Chance Act. The renewed interest in the bill better positions the Second Chance Act for a vote in early December when members of the Senate return to work on the federal spending bills and other unfinished business. House leaders have committed to act on the legislation if the Senate is successful. If the bill is not passed during the lame duck session, bill sponsors plan to reintroduce the measure in the 110th Congress.

Some states are also taking action. On June 7, 2006, Governor George Pataki signed into law an important change affecting sentencing in New York. Penal Law §1.05(6) has been amended to add as a new goal “the promotion of their (defendant’s) successful and productive reentry and reintegration into society.” The amendment became effective immediately and marks a significant shift by the legislature in sentencing policy. The new

11 H.R. 1704, introduced April 2005.
12 S. 1934, introduced October 2005.
law will require every judge presiding at sentencing in a criminal case to consider carefully the extent to which any given sentence will help to promote the convicted person’s reintegration into society. Under the amended law a new and increased significance is placed on breaking the cycle of recidivism by imposing sentences of a length and type that will promote successful reintegration and increase public safety.\footnote{Center for Community Alternatives, Innovative Solutions for Justice, \textit{New York State Enacts a New Sentencing Model to Meet the Challenge of Reentry and Public Safety} \url{available at http://www.communityalternatives.org/justice_strategies/issues.html} (last visited Dec. 16, 2006).}

From the array of literature addressing the topic, to the diverse public and private resources allocated to develop programs, to the multidisciplinary efforts of social services, corrections, defenders, prosecutors, the judiciary, and academia, it appears that important steps toward removing prisoner reentry obstacles are on the horizon. If these efforts continue to gain momentum and the Second Chance Act is passed with adequate levels of federal funding, there may yet be hope to dismantle the “vast and increasing maze of exclusions”\footnote{Deborah N. Archer and Kele S. Williams, Making America “The Land of Second Chances”: Restoring Socioeconomic Rights for Ex-Offenders (unpublished work in progress) \url{available at http://courts.state.ny.us/ip/partnersinjustice/Second-Chances.pdf}.} that face ex-offenders, impeding their hopes of success in the free world.\footnote{\textit{Id.}}

This paper seeks to build on the work done by Justice Action Center\footnote{The Justice Action Center at New York Law School brings together faculty and students in an ongoing critical evaluation of public interest lawyering. Through scholarship and fieldwork, the Center seeks to evaluate the efficacy of law as an agent of change and social betterment. The Center fosters collaborative efforts by faculty and students to engage the specific problems presented in various areas of public interest law.} colleagues, Christine Tramontano\footnote{J.D., May 2006, New York Law School.} and Jill Janeczko,\footnote{J.D., May 2006, New York Law School.} by synthesizing their work with findings by other researchers. In her \textit{Collateral Consequences of Conviction Practitioner’s Guide}, Tramontano outlined the collateral sanctions associated with (i) housing, (ii) public benefits, (iii) employment and licensing, and (iv) the sex offender registry. Janeczko’s paper addressed (i) voting rights, (ii) civic rights, (iii) education, (iv) parenting issues, and (v) firearm restrictions. Although both

\footnote{\textit{Id.}}
Tramontano and Janeczko discussed, at least to some extent, the impact of federal restrictions in their papers, the only state considered was New York. Here, four additional states – Indiana, New Jersey, New York, Ohio, and Pennsylvania – will be profiled, and the data will be compiled into various tables including a table summarizing the federal statutes imposing collateral consequences.

Part II of this paper will present current data about incarceration and recidivism, including direct and indirect costs. Part III will discuss access to criminal record information. Part IV will discuss the most common barriers to successful reentry, using the categories developed by the Working Group of the *Partners in Justice Colloquium*. Part V will discuss the impact of collateral consequences on disadvantaged communities. Finally, Part VI will discuss the need for incorporating a holistic advocacy approach to both representation and reentry. In addition, a series of tables summarizing federal consequences and collateral consequences by state will be presented in the Appendix.

II. INCARCERATION AND RECIDIVISM – CURRENT DATA

In his 2004 State of the Union Address, President Bush stated that “some 600,000 inmates will be released from prison back into society.” As of December 31, 2001, an estimated 5.6 million adults had served time in state or federal prison, including 4.3 million former prisoners and 1.3 million adults currently in prison. Nearly a third of former prisoners were still under correctional supervision, including 731,000 on parole, 437,000 on probation, and 166,000 in local jails. If recent incarceration rates remain unchanged, an estimated one of

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19 See Partners in Justice, *supra* Note 1.
21 United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics *available at* [http://www.ojp.usdoj.gov/bjs/crimoff.htm#prevalence](http://www.ojp.usdoj.gov/bjs/crimoff.htm#prevalence) (last visited Nov. 6, 2006).
22 *Id.*
every fifteen persons (6.6%) will serve time in a prison during his or her lifetime.23 Sixty-four percent of prison inmates belonged to racial or ethnic minorities in 2001. Based on current rates of first incarceration, an estimated 32% of black males will enter state or federal prison during their lifetime, compared to 17% of Hispanic males and 5.9% of white males.24 Among State prison inmates in 2000, nearly one-half were sentenced for a violent crime (49%), one-fifth were sentenced for a property crime (20%), and about one-fifth were sentenced for a drug crime (21%).25

Recidivism is also a serious concern. According to the Bureau of Justice Statistics ("BJS"), two studies come closest to providing "national" recidivism rates for the United States.26 One tracked 108,580 State prisoners released from prison in eleven states in 1983, and the other tracked 272,111 prisoners released from prison in fifteen states in 1994. The prisoners tracked in these studies represent two-thirds of all the prisoners released in the United States for that year. The 272,111 offenders discharged in 1994 accounted for nearly 4,877,000 arrest charges over their recorded careers.

The study estimates that 67.5% of prisoners released in 1994 were rearrested within three years, an increase over the 62.5% found for those released in 1983. The rearrest rate for property offenders, drug offenders, and public-order offenders increased significantly from 1983 to 1994. During that time, the rearrest rate increased from 68.1% to 73.8% for property offenders, from 50.4% to 66.7% for drug offenders, and from 54.6% to 62.2% for public-order offenders. The rearrest rate for violent offenders remained relatively stable (59.6% in 1983 compared to 61.7% in 1994).

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23 BJS, supra note 21.
24 Id.
25 Id.
26 Reentry Trends in the U.S., United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics available at available at http://www.ojp.usdoj.gov/bjs/reentry/recidivism.htm (last visited Nov. 6, 2006).
Overall, reconviction rates did not change significantly from 1983 to 1994. Among, prisoners released in 1983, 46.8% were reconvicted within three years compared to 46.9% among those released in 1994. From 1983 to 1994, reconviction rates remained stable for released violent offenders (41.9% and 39.9%, respectively), property offenders (53.0% and 53.4%), and public-order offenders (41.5% and 42.0%). However, among drug offenders, the rate of reconviction increased significantly, going from 35.3% in 1983 to 47.0% in 1994.

The annual cost per year for inmates incarcerated in federal prison is $23,542.27 The cost per year of state prison averages $20,261.28 Considering that the average time served is 19 months for technical violators29 and 31 months for releasees convicted with new sentences,30 the fiscal implications associated with recidivism are significant. In 2004, states spent an estimated $40.7 billion on corrections,31 a figure that does not include related criminal justice and victim costs. In addition to the costs of incarceration and post-release supervision, there are numerous costs associated with providing health and social services to former inmates. Returning prisoners face a variety of personal issues that jeopardize their chances for successful reentry into the community. Eighty percent of prisoners have a history of substance abuse, sixteen percent are diagnosed with mental illness, 70 percent are high school dropouts, most are unemployed upon release, and many are or will become homeless.32

There are serious consequences for families and children of prisoners as well. More than half of the 1.4 million adults incarcerated in state and federal prisons are parents of minor

28 Id.
30 Id.
31 Id.
32 NGA Center for Best Practices, supra note 29.
children. Among the men held in state prison, 55 percent report having minor children. Among the women, who account for 6 percent of the state prison population, 65 percent report having minor children. Over half (58%) of the minor children of incarcerated parents are less than ten years old.

The numbers and percentages of women in prison, on probation, and on parole are growing rapidly. From 1990 to 1998, the number of women in prison increased by 88 percent, on probation by 40 percent, and on parole by 80 percent. Female prisoners are more likely to be minorities, more likely to be poorer than their male counterparts, and are more likely to be placed in institutions farther from home. The majority of parents are serving time for either violent offenses (46% of fathers and 26% of mothers) or drug offenses (23% of fathers and 35% of mothers). Incarcerated parents in state prison are sentenced to a mean term of 80 months for their current offense. More than three-quarters of incarcerated parents in state prison report a conviction prior to the one for which they are serving their sentence, and more than half had previously been incarcerated.

With the number of individuals currently incarcerated or under post-release supervision, the high rates of recidivism, and the impact of incarceration on families and children, the issue of collateral consequences of criminal conviction has serious implications for American society as a whole and particularly for minorities and communities already disadvantaged by drugs, crime, and poverty.

35 Id.
36 Id.
37 Id.
38 Id.
39 Id.
III. ACCESS TO CRIMINAL RECORD INFORMATION

Access to criminal records is in itself a barrier to reentry. Although states have the right to permit the sealing or expungement of arrests that never led to conviction and conviction records after an appropriate amount of time has elapsed, most never expunge or seal conviction records. Most states allow arrest records to be sealed or expunged when the arrest did not lead to conviction. In many states, virtually anyone with an Internet connection can find information about an individual’s conviction history without his or her consent. Further, even if such records are expunged, the existence of the record does not completely disappear. A state that permits an individual to deny the existence of a sealed or expunged arrest record may still report that an expunged record exists.40

Expungement is becoming significantly harder to accomplish in the electronic age. Records once held only in paper form by law enforcement agencies, courts and corrections departments are now routinely digitized and sold in bulk to the private sector. Some commercial databases now contain more than 100 million criminal records. Because these databases are updated only sporadically, “expunged” records often turn up in criminal background checks ordered by employers and landlords. For the individual affected, this likely means that they will be forced to reveal at least some of the information to an inquiring party.41

All five states reviewed allow some level of expungement or sealing of arrest records, but as a general matter, sealing or expungement of conviction records is more difficult. In Indiana, individuals can petition for expungement of arrest records that did not lead to conviction, and expunged arrests are not reported by the state criminal justice repository. Conviction records can

be sealed after fifteen years from discharge. In New Jersey, if an arrest record is expunged, the person can deny the existence of the arrest. Individuals in New Jersey may petition for expungement of a conviction after two years for municipal ordinances, after five years for petty disorderly offenses, and after ten years for many adult criminal convictions. No expungement of certain violent, sexual, and drug-related convictions is permitted. In New York, adult criminal convictions may not be sealed. Ohio permits first offenders to apply for expungement after three years for a felony conviction, and after one year for a misdemeanor conviction. In Pennsylvania, records may only be expunged when an individual reaches 70 years of age and has not been arrested or prosecuted for ten years.\(^42\)

Of the states reviewed, New Jersey, New York, and Ohio, have no restrictions on reporting criminal history information to non-law enforcement entities for employment purposes and may also permit release of records in a number of other instances. Indiana does not report arrests less than one year old to non-criminal justice agencies. If the state seals an individual’s criminal record, it will not disclose convictions more than 15 years old. In certain circumstances, non-criminal justice agencies and individuals can obtain criminal history information. These circumstances range from running for public office to applying for employment or a license to unpaid child support. Pennsylvania does not report arrests more than three years old where there was no conviction and there are no pending proceedings. However, non-criminal justice agencies and the public can obtain records of conviction.\(^43\)

IV. COMMON BARRIERS TO SUCCESSFUL REENTRY

Collateral sanctions were initially developed for limited and focused purposes, and they were “acknowledged as a ‘deserved’ consequence of and as a proportional in severity to an

\(^42\) Liptak, \textit{supra} note 41.
\(^43\) Love, \textit{supra} note 40.
individual’s breach of the social contract … [while] other disabilities were largely precautionary measures employed to protect the public from the possibility of ex-felons further breaching laws,” such as penalties connected to the original criminal culpability of the offender.\textsuperscript{44} A dramatic shift in social welfare and criminal justice policies occurred in the late 1970s as a result of the War on Drugs and Terror.\textsuperscript{45}

There are a number of challenges that make it difficult for returning prisoners to gain access to jobs, benefits, or services that might assist in their transition into the community. In addition to the permanent changes to an individual’s legal status as a result of conviction, the stigma of being an ex-offender brings into play more subtle and wide-ranging forms of discrimination and shaming.\textsuperscript{46}

Society’s unwillingness to welcome convicted persons back into the community is reflected in the various legal and administrative barriers to reentry. Basic physical needs such as food, clothing, and shelter are generally the most pressing needs faced by returning prisoners. A returning prisoner may not even have a place to live or a suit of clothes on release. A parent may be unable to return to the family home. The ex-offender may be restricted from receiving public assistance or prohibited from living in public housing. Limited employment opportunities make it nearly impossible for an ex-offender to earn a living wage. Many employers have a natural reluctance to hire people with criminal records. The lack of educational and job training programs combined with ineligibility for financial aid may make the prospect of a life without crime almost an impossibility. Finally, a convicted person’s legal status may forever bar his or her ability to fully participate in the civic process.


\textsuperscript{45} \textit{Id}.

\textsuperscript{46} Love, \textit{supra} note 40.
The Working Group of the *Partners in Justice Colloquium*\(^{47}\) has organized collateral consequences into six categories or subject areas: (a) Civic Participation, which includes voting rights and jury service; (b) Employment, including application, discrimination, and licensure; (c) Family, which addresses issues of adoption, foster parenting, and parental rights; (d) Financial Impact, including issues related to education and financial aid, government benefits, and financial penalties; (e) Housing, including both public and private sector housing; and (f) Immigration.\(^{48}\) The collateral consequences typically associated with each category are described below.

**A. BARRIERS TO CIVIC PARTICIPATION**

Voting and jury service are responsibilities and privileges of citizenship, and both are curtailed as a result of criminal convictions in most states. All five states reviewed restrict voting rights while incarcerated. In New York an individual may not vote while incarcerated or on parole. In New Jersey and Pennsylvania, an individual may not vote while incarcerated, on parole, or on probation. Although none of the states reviewed have a lifetime ban on voting for some or all people convicted of crimes, there are twelve states with lifetime bans, seven of which allow the ban to be lifted only at the discretion of the state.\(^{49}\)

In Indiana, a person “under a sentence imposed for an offense” is disqualified from jury service, but the right to serve as a juror is automatically restored upon completion of sentence, including any period of parole.\(^{50}\) In New Jersey, an individual convicted of an “indictable offense” in New Jersey or an other state or federal court is permanently disqualified from jury

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\(^{47}\) See *Partners in Justice*, *supra*, note 1.
\(^{48}\) *Id.*
\(^{49}\) *Love, supra* note 40.
\(^{50}\) Ind. Cod. Ann. § 33-28-4-8(b).
Persons convicted of a felony may not serve on a jury in New York state. A person convicted of a felony in Ohio loses the right to serve on a jury. In Pennsylvania, a person convicted of a crime punishable by imprisonment for more than one year is ineligible to serve as a juror. A presidential pardon will restore the right of a federal felon to serve on a federal or state jury.

Voting and jury service are not the only civic rights affected by criminal conviction. Under federal law and most state laws, a person convicted of a felony may also be disqualified from holding or being a candidate for elected office and prohibited from owning firearms.

B. BARRIERS TO EMPLOYMENT

Many states have laws permitting employers and occupational licensing agencies to ask about and consider arrests that never led to conviction in making employment decisions. Both Indiana and New Jersey allow employers to ask job applicants about arrests not leading to conviction and may also consider arrests not leading to conviction in hiring decisions. In New York, most private and public employers and occupational licensing authorities may not ask about arrests that did not lead to conviction, and except for law enforcement, may not act adversely upon arrests that did not lead to conviction. In Ohio, private and public employers and licensing authorities may not ask about sealed arrests or consider arrest information in hiring decisions. Pennsylvania does not prohibit asking about arrests not leading to conviction but employers may only use information to the extent that it relates to the applicant’s suitability for the position.

51 N.J.S.A. § 2B:20-1
52 Jud. L. § 510(3).
53 Ohio Rev. Code §§ 2961.01 and 2967.16.
55 For additional citations of specific state statutes, please refer to Appendix II.
Employers in most states can deny jobs to or fire anyone with a criminal record, regardless of individual history, circumstance or business necessity. Several states have no standard governing the relevance of conviction records of applicants for occupational licenses. In a growing number of states, employers are barred by state licensing agencies from hiring people with a wide range of criminal convictions, even those unrelated to the job or license sought. Although states have the power to offer certificates of rehabilitation, few actually issue such certificates. Of the states reviewed, only New Jersey and New York offer certificates of rehabilitation.

In Indiana, an occupational license may not be denied, revoked, or suspended solely because of a conviction record, but the record may be considered in making a determination about suitability for a specific position. The state imposes no standards prohibiting employment discrimination by private employers.57

In New Jersey, there are no employment discrimination standards for public or private employers. Occupational licensing authorities may not discriminate on the basis of a conviction unless the conviction disqualifies the individual from public office or relates adversely to the license sought. Licensing authorities are required to consider factors other than conviction, and an applicant is entitled to a written explanation of the reasons for denial.58

In New York, public employers and occupational agencies may not bar individuals based on criminal convictions unless it is job related or the applicant poses a danger. However, there is an exception for law enforcement. Private employers with more than ten employees may not bar

57 Love, supra note 40.
58 Id.
individuals based on criminal conviction unless it is job related or the applicant poses a threat. If
denied employment or licensure in New York, the applicant is entitled to a written explanation.  

In Ohio, there are no standards prohibiting employment discrimination based on criminal
history unless the conviction is sealed. If the conviction is sealed, employers and licensing
agencies may not inquire about a sealed conviction unless it is directly related to the job.
However, there is an exception for certain educational occupations.

Pennsylvania does not have standards prohibiting employment discrimination by private
employers, but public employers may consider only job-related convictions. Occupational
licensing agencies may consider any felony but only job-related misdemeanors. An applicant
denied employment or licensure based on criminal history is entitled to a written explanation.

Restricting the ability to drive makes it harder to be employed, gain access to needed
services, or to obtain education or job training. In 1991, Congress passed a law withholding
twenty percent of certain highway funds from states that did not enact laws revoking or
suspending licenses of certain drug offenders. All of the reviewed states revoke or suspend
licenses of persons convicted of drug-related offenses or driving while intoxicated.

C. FAMILY BARRIERS

As discussed in Part II, more than half of the 1.4 million adults incarcerated in state and
federal prisons are parents of minor children. Families and children of prisoners suffer serious
emotional and financial consequences. Many fathers are released from prison owing large
amounts of child support. Because female prisoners are more likely to be placed in institutions

59 Love, supra note 40.
60 Id.
61 Id.
62 Id.
63 Travis, supra note 33.
64 Id.
farther from home, they often have fewer visits and limited contact with family members while they are incarcerated making their transition back into their communities even more difficult.⁶⁵ Although men who commit crimes are not necessarily seen as good members of their communities, female offenders are more likely to be ostracized.⁶⁶

Generally, when a father goes to prison, the mother keeps the family intact, but when a mother goes to prison, the family is more likely to be broken.⁶⁷ Although some children live with a relative during their mother’s incarceration, many end up in foster care.⁶⁸ An overriding concern for many women upon release is regaining custody of their children. The majority of incarcerated mothers had been the sole caretakers for their children prior to incarceration.⁶⁹ In addition to the burden of trying to find housing and employment upon release, these women are often fighting to be reunited with their children.

Federal welfare and adoption laws create significant obstacles for women ex-offenders.⁷⁰ Welfare laws reduce access to benefits that might provide transitional support, and adoption laws add pressure by reducing the time that parents have to reunite with their children before permanently losing custody.⁷¹ In addition, the federal Adoption and Safe Families Act of 1997

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⁶⁵ Female prisoners are on average 160 miles farther from their communities than their male counterparts. NGA Center for Best Practices, supra note 29. See also Report of the Special Committee on Gender to the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias (1995), excerpted in 84 GEO. L.J. 1657, 1796 (1996).
⁷⁰ Acoca, supra note 67.
⁷¹ Id.
(“AFSA”) bars people with certain convictions from being foster or adoptive parents. States may follow these standards or adopt their own policies.

In Indiana, criminal record checks are included in pre-adoption investigations but do not impose an automatic bar; however, a person convicted of any felony may be barred from foster parenting. In Ohio, prospective adoptive and foster parents may be barred for a variety of felony convictions. Convictions for certain violent, sexual and weapons-related offenses create an absolute bar from foster parenting in Indiana and New Jersey. In New York and Pennsylvania, certain felony offenses create an absolute bar for both adoption and foster parenting. In almost all cases, the state statute is silent on the length of the bars for prospective adoptive and foster parents, so in effect, they operate as lifetime bars.

In New Jersey, New York, and Ohio, applicants for foster parenting may be barred if other adult members of the household have any convictions that would bar the applicant. Only New Jersey also bars adoptive parents based on the criminal record of another household member. Applicants in Indiana may not be automatically barred by convictions of other household members, but if the state does deny an application based on criminal history, the applicant is entitled to a written explanation and an administrative hearing. In most cases, the states will allow approval of foster and adoptive parents in spite of a disqualifying criminal record if the individual meets rehabilitation standards or the applicant can demonstrate that denial will create an unreasonable risk of harm and approval is in the child’s best interest.

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73 Love, supra note 40.
74 Id.
75 Id.
D. Financial Barriers

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA")\(^\text{76}\) prohibits anyone convicted of a drug-related felony from receiving federally funded cash assistance\(^\text{77}\) and food stamps. The law also prohibits states from providing assistance, food stamps, or supplemental security income ("SSI") to anyone in violation of their parole or probation. This is a lifetime ban – even if the person has completed his or her sentence, overcome an addiction, been employed but got laid off, or earned a certificate of rehabilitation.\(^\text{78}\)

States have the option of passing legislation to limit or opt out of the ban. Of the states reviewed, only Indiana has adopted the federal drug-felon ban. New York, Ohio, and Pennsylvania have completely opted out of the ban, and New Jersey has modified the ban such that individuals convicted of drug-related offenses involving possession or use only may be eligible for benefits if currently enrolled in or successfully completed a treatment program.\(^\text{79}\) In addition, because there are often long delays in processing applications for returning offenders, returning prisoners are at the highest risk for committing new crimes when they are first released. Access to public benefits supports successful reentry by helping returning prisoners support themselves and their children without resorting to illegal activities.\(^\text{80}\)

The Higher Education Act of 1998\(^\text{81}\) makes students convicted of drug-related offenses ineligible for a grant, loan, or work assistance. This federal barrier cannot be altered by the states. Drug crimes are the only class of offense that results in the automatic denial of federal financial aid. Financial aid is suspended on the date of conviction for varying lengths of time

\(^{77}\) Also known as Temporary Assistance for Needy Families (TANF).
\(^{78}\) Love, supra note 40.
\(^{79}\) Id.
\(^{80}\) NGA Center for Best Practices, supra note 29.
\(^{81}\) 20 U.S.C. §1091(r).
depending on the type of offense and whether or not it is a repeat offense. A person convicted of a drug-related offense who is in school may become eligible for a student loan before the end of the suspension period if he or she completes a substance abuse treatment program approved by the Secretary of Education and passes two unannounced drug tests.\textsuperscript{82}

Almost every encounter with the criminal justice system these days can give rise to a fee. Financial penalties create additional collateral consequences. There are application fees and co-payments for public defenders. Sentences can include court costs, restitution, and contributions to various funds. Private probation companies charge for supervision, and halfway houses charge for staying in them. People sentenced to community service may be required to buy insurance policies for every week they work. Criminals on probation and parole who wear global positioning devices to monitor their whereabouts are charged a fee. For those who do not or cannot pay, the taint of a “bad” credit history is thus added to the stigma of a criminal conviction.\textsuperscript{83}

The sums raised by these ever-mounting fees are intended to help offset some of the enormous costs of operating the criminal justice system, but even relatively small fees can have devastating consequences for people who emerge from prison with no money, credit or prospects, and who live in fear of being sent back for failing to pay.\textsuperscript{84} A person who fails to pay a fine, surcharge, or fee may face subsequent imprisonment. Prison and jail officials are authorized by law to collect the fees and surcharges imposed at sentencing, by taking money

\textsuperscript{82} Love, \textit{supra} note 40.  
from inmates’ accounts, thereby reducing the funds available to people leaving prison to reenter their communities in a healthy and constructive manner.85

E. HOUSING BARRIERS

A number of state and federal laws limiting access to private and public housing for those with criminal convictions, particularly drug-related offenses. At least ten percent of returning prisoners are homeless both before and after incarceration. The rate may be even higher – 30 to 50 percent for prisoners returning to major cities. Not surprisingly, studies suggest that returning prisoners with more stable housing may be less likely to be reincarcerated. There are a number of challenges for returning prisoners to find secure housing. Affordable, transitional, and supportive housing is extremely limited, and federal laws give the local housing authority to decide whether or not to bar individuals with criminal records from public housing. The law also gives the housing authority the right to consider arrests that never led to conviction.86

The Housing Opportunity Program Extension Act of 199687 allows public housing agencies the authority to (i) access criminal records of the applicant or current tenant and (ii) access records from drug treatment facilities where that information is solely related to whether the applicant is currently engaging in the illegal use of a controlled substance. Public housing authorities may deny admission based on an applicant’s past drug conviction to both project-based public housing and Section 8 housing88 programs.89

85 Liptak, supra note 84.
86 NGA Center for Best Practices, supra note 29.
87 42 U.S.C.A. § 1437d(s) and § 1437d(t).
88 Section 8 is the Tenant Based Housing Assistance Program which pays private landlords the difference between the fair market value of a unit and the rent that is affordable to a tenant with limited income.
Since local housing agencies set their own policies, data reported is for the following agencies in the major urban area in each state – the Indianapolis Housing Authority in Indiana, the Newark Public Housing Authority in New Jersey, the New York City Housing Authority in New York, the Cuyahoga Metropolitan Housing Authority in Cleveland, Ohio, and the Philadelphia Public Housing Authority in Pennsylvania. In all reviewed states, the housing authority makes individual determinations about an applicant’s eligibility based on the relevance of the criminal record and considers rehabilitation. Indiana, New Jersey, and Pennsylvania consider arrests that did not lead to conviction in admission criteria, but New York and Ohio do not. In all cases, there is a bar for individuals evicted as a result of drug-related convictions. The bar is three years in Indiana, New Jersey, Ohio, and Pennsylvania and anywhere from two to six years in New York.

In addition to eligibility criteria, the “one-strike” policy permits each public housing agency to include lease provisions that provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or any drug-related criminal activity on or off such premises, by the tenant, any member of the tenant’s household, or any guest of the tenant, shall be cause for termination of tenancy.\(^90\) Any “violent or drug-related criminal activity,” permits housing authorities to forgo normal grievance procedures and sue for eviction in court directly.\(^91\) This applies to both public housing and Section 8 housing.\(^92\)

Federal civil forfeiture law, along with Housing Opportunity Program Extension Act of 1996, provides the statutory basis for the federal government to seize housing units that are not

\(^{90}\) 42 U.S.C. 1437d(1)(6).
\(^{91}\) See 42 U.S.C. §1437d(k); 24 C.F.R. § 966.51.
\(^{92}\) 42 U.S.C. 1437f.
public housing from tenants with drug charges. The 1988 revision of federal civil asset forfeiture law, Section 881, permitted the forfeiture of leasehold interests, such as apartments. The Civil Asset Forfeiture Reform Act of 2000 amended Section 881 to provide for the forfeiture of “all real property…(including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year’s imprisonment.”\(^93\)

State anti-discrimination laws that offer protection against private housing discrimination usually do not protect against discrimination on the basis of criminal convictions. For example, in New Jersey a tenant can be evicted from the premises if convicted or pled guilty of a drug-related offense that occurred within or upon the leased premises or the building or the complex of buildings or the land next to the buildings, or if he or she knowingly allows someone who has been convicted or pled guilty to a drug offense to occupy the premises continuously or intermittently.\(^94\) The law in New York gives landlords and third parties the right to initiate eviction proceedings against a lessee when either the lessee or an occupant uses the building or premises for “any illegal trade, manufacture or other business.”\(^95\) Conviction of a crime is not required; a finding of criminal activity by the Housing Court is sufficient grounds for eviction.\(^96\) In New York, private landlords can also evict individuals under a nuisance theory.\(^97\) Under most

\(^94\) N.J.S.A. § 2A: 18-61.1(q).
\(^95\) N.Y. REAL PROP. LAW § 231(1) Consol. 2005).
\(^96\) Id.
residential leases. activity that interferes with other tenants’ use and enjoyment of the property can constitute a breach of the lease and grounds for eviction.98

F. IMMIGRATION BARRIERS

September 11, 2001 has profoundly impacted the immigrant community. The Department of Justice and the U.S. Congress have passed several statutes and federal regulations since September 11 that affect the lives of immigrants. Immigrants with criminal convictions have become one of the primary concerns of the Department of Justice and the new Department of Homeland Security (“DHS”).99

Any person who is not a United States citizen, including lawful permanent residents, can be deported because of a criminal conviction. Lawful permanent residents are immigrant non-citizens who have been granted permission by the United States government to live and work in the United States for an indefinite period of time. A person must become a lawful permanent resident before becoming a United States citizen. Length of residency in the United States and the existence of close relatives who are U.S. citizens may eventually prevent a non-citizen’s deportation, but it does not prevent the DHS from initiating efforts to permanently remove the individual from the United States.100

The Immigration and Nationality Act (“INA”) recognizes three categories of crimes that can place a non-citizen at risk of deportation or prevent a non-citizen from ever becoming a lawful permanent resident. Aggravated felonies are the most serious crimes and are specifically defined by statute in the INA. Because of the sentence imposed by the state criminal court, some common misdemeanor crimes can be considered aggravated felonies for immigration purposes.

98 Tramanto, supra note 97, at 9.
100 Id.
These crimes include theft and crimes of violence. For both of these crimes a non-citizen can be placed in deportation proceedings and deported from the United States, if the person is sentenced to more than one-year imprisonment, including any suspended time. A “crime of violence” is a term vaguely defined by the United States Code and could include convictions for assault in the fourth degree and felony driving under the influence.\(^{101}\)

Crimes of moral turpitude are the second category of crimes that can impact a non-citizen’s ability to remain in the United States. The following types of crimes have been held to involve moral turpitude: (i) crimes (felonies or misdemeanors) in which either an intent to defraud or an intent to steal is an element; (ii) crimes (felonies or misdemeanors) in which there is an element of intentional or reckless infliction of harm to persons or property; (iii) felonies, and some misdemeanors, in which malice is an element; (iv) sex offenses, in which some “lewd” intent is an element. Thus, murder, rape, voluntary manslaughter, robbery, burglary, theft, arson, aggravated forms of assault, forgery, prostitution and shoplifting have all been consistently held to involve moral turpitude.\(^{102}\)

A third category of crimes specifically listed in the Immigration and Nationality Act may either trigger deportation or prevent a non-citizen from attaining lawful permanent resident status. Crimes included in this category include violations of any law relating to a controlled substance, domestic violence convictions, judicial determinations of protective order violations and convictions under any law of purchasing, selling, using or possessing a firearm or destructive device.\(^{103}\)

Automatic removal from the United States is not the only immigration consequence to a criminal conviction. For example, if deported for an aggravated felony conviction, a non-citizen

\(^{101}\) Bronen, supra note 99.

\(^{102}\) Id.

\(^{103}\) Id.
may be permanently barred from returning to the United States, regardless of the length of residency or the fact that the non-citizen has U.S. citizen family members, including a spouse and children. In addition, all non-citizens must prove that they are persons of good moral character when they are applying for asylum, lawful permanent residency or United States citizenship. Crimes such as driving under the influence will be considered a negative discretionary factor that can impact a non-citizen’s ability to prove good moral character and thus attain lawful permanent residency or become a naturalized citizen.\textsuperscript{104}

Sentences are often the most important factor in determining the immigration consequences for a non-citizen defendant. Section 101(a)(48)(B) of the INA defines a sentence as “any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by the court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.” Consequently, the DHS will analyze the actual sentence imposed—regardless of any time suspended—to determine whether to initiate deportation proceedings.\textsuperscript{105} On December 5, 2006, the Supreme Court, in an 8-1 decision, held that drug possession convictions that qualify as state felonies, but would not qualify as felonies under federal law, are not “aggravated felonies” as defined under INA § 101(a)(43)(B).\textsuperscript{106}

Deportation proceedings are civil in nature. Non-citizens have a statutory right to counsel but not at government expense. The DHS can initiate deportation proceedings after the non-citizen has been convicted, or years after the non-citizen has served his or her criminal sentence. Criminal convictions rarely disappear from a non-citizen’s criminal record, even if the

\textsuperscript{104} Bronen, \textit{supra} note 99.

\textsuperscript{105} \textit{Id.}

\textsuperscript{106} Lopez v. Gonzales, No. 05-547, 2006 WL 3487031 (U.S. Dec 05, 2006).
conviction has been vacated or expunged.\textsuperscript{107} Very few immigration remedies exist for non-citizens convicted of crimes. There are almost no legal avenues that prevent the deportation of non-citizens convicted of an aggravated felony or a controlled substance violation. For these crimes, length of residency in the United States or the existence of spouses, children or parents with U.S. citizenship will not prevent a non-citizen’s deportation. For non-citizens convicted of crimes of moral turpitude and domestic violence offenses, limited immigration remedies exist that may prevent deportation. The viability of these immigration remedies depends on the immigration status of the non-citizen, length of residence in the U.S. and the existence of relatives with citizenship or lawful permanent residency.\textsuperscript{108}

Government funding for immigration enforcement has more than tripled.\textsuperscript{109} Recent laws have increased the power of enforcement officers to monitor and detain non-citizens, and the immigration detention system has become the fastest growing section of the U.S. prison industry.\textsuperscript{110} This environment breeds the danger of over-reaching enforcement practices that breach the basic civil liberties of immigrants (and citizens alike) has grown tremendously. Just as with other collateral consequences, immigrants facing deportation as a result of conviction or pleading guilty to a crime must be informed of these consequences.

\textbf{V. IMPACT ON DISADVANTAGED COMMUNITIES}

Problems associated with prisoner reentry and collateral consequences of consequences have a disproportionate impact on disadvantaged communities and neighborhoods. People released from prison and jail return in high concentrations to a small number of communities in each state. For example, 59 percent of Maryland prisoners released in 2001 returned to

\textsuperscript{107} Bronen, \textit{supra} note 99.
\textsuperscript{108} \textit{Id.}
\textsuperscript{110} \textit{Id.}
Baltimore City. Moreover, individuals tended to return to one of just a few communities within the city. In Connecticut, almost half of the prison and jail population is from just a handful of neighborhoods in five cities, areas which have the most concentrated levels of poverty and nonwhite populations in the state.

There is a corresponding void of young men, often nonwhite, in these communities. For example, in some Brooklyn neighborhoods, one out of eight parenting-age males is admitted to jail or prison in a single year. In Cleveland, Ohio, on certain blocks that contribute disproportionately large numbers of people to state prison, somewhere between 8 and 15 percent of the young black males are incarcerated on a given day. The loss of young men who are potential wage earners and supporters of families has a detrimental effect on poor communities while the offender is in prison, and unfortunately, even after release as the offender struggles to find employment and reconnect in a meaningful way with the community.

Many of these men return to their communities in less than two and a half years. Studies have indicated that these individuals typically rely on their families for housing. Often, these families are not ready to be reunited with their spouse, partner, sibling, child, grandchild, or other relative, and their communities are ill-equipped to serve, support, and supervise them. These are fragile situations, made especially precarious by the absence of services such as health

112 Id.
116 John Hogan and Ronit Dinovitzer, Collateral Consequences of Imprisonment for Children, Communities, and Prisoners, 26 PRISONS: CRIME AND JUSTICE 121, 121-22 (Michael Tonry and Joan Petersilia, eds. 1999).
care and drug treatment, employment opportunities, affordable housing, and supports in the surrounding area.\textsuperscript{118}

When releasees return to the community, their job prospects are generally dim, their chances of finding their own place to live are bleak, and their health is typically poor. The vast majority have not completed high school.\textsuperscript{119} A major study conducted in three states found that fewer than half of released prisoners had a job lined up upon their return to the community.\textsuperscript{120} Three of every four offenders released from prison have a substance abuse problem, and more than one out of three report some form of physical or mental disability.\textsuperscript{121} Eighteen percent of people released from prison have Hepatitis C.\textsuperscript{122}

As the number of people released from prison and jail has increased nearly fourfold over the past twenty years, the extent to which these individuals are prepared to return the community has decreased significantly.\textsuperscript{123} Although approximately three of every four people released from incarceration have a history of substance abuse, only ten percent in state prison and three percent in local jails receive formal treatment prior to release.\textsuperscript{124} Only 35 percent of those released from prison participated in educational programs while incarcerated; even fewer (27 percent) took part in vocational training.\textsuperscript{125} These low figures are especially troubling considering that a much greater percentage of the prison population used to have access to such programs.

\textsuperscript{118} Hogan, \textit{supra} note 116.

\textsuperscript{119} According to the BJS, only 46 percent of incarcerated individuals have a high school diploma or equivalent. C. W. Harlow, \textit{Education and Correctional Population}, U.S. Dep’t of Justice, BJS (2003).


\textsuperscript{122} Travis, \textit{supra} note 33.

\textsuperscript{123} Id.

\textsuperscript{124} Mumola, \textit{supra} note 118; Harlow, \textit{supra} note 124.

\textsuperscript{125} Steurer, \textit{supra} note 120.
The historic relationship between disenfranchisement and racial oppression also cannot be ignored. Felony disenfranchisement laws have a tainted history of racial prejudice and oppression. Many believe that that these new laws targeting and disempowering communities of color are no accident. After the Civil War, lawmakers found new uses for felony disenfranchisement laws. In theory, the newly adopted Fifteenth Amendment allowed African-Americans to vote, but in practice, Southern whites soon began to rewrite their state constitutions to remove African-Americans from politics. These lawmakers used a variety of legal schemes to disempower African Americans, including literacy tests, poll taxes, grandfather clauses and all-white primaries.

As the numbers demonstrate, the impact of crime and incarceration on African-American communities has been particularly devastating. Across the country, African-Americans are denied the vote because of criminal records five times more often than white Americans. Latinos face similar disenfranchisement rates. Neither African-Americans nor Latinos commit five times the number of felonies as whites, but some would argue that racial profiling, targeted law enforcement, incompetent counsel, jury bias and unequal sentencing provisions have created a prison population that is disproportionately African-American and Latino.

Dramatic shifts in social welfare and criminal justice policies in the early 1980s resulted in an unprecedented increase in the numbers of people incarcerated for drug-related offenses. Law professor David Cole points out that “together, the drug war and felony disenfranchisement have done more to turn away black voters than anything since the poll tax.” In fact, the war

127 Id.
128 Janezko, supra note 44.
on drugs is largely responsible for the disproportionate increase in the incarceration rate among African-Americans.\textsuperscript{130} Scholars estimate that 14 percent of illegal drug users are African-American, yet they make up 55 percent of those convicted and 74 percent of those sentenced for drug possession.\textsuperscript{131} According to the U.S. Sentencing Commission, 65 percent of crack cocaine users are white, but 90 percent of those prosecuted for crack crimes in federal court are black – and are subject to greater penalties than powder cocaine offenders.\textsuperscript{132}

Some states extend full voting rights to all eligible citizens, regardless of their criminal records. Others take away voting rights forever, even in the case of a first conviction. A study by sociology professors Christopher Uggen and Jeff Manza and law student Angela Behrens identifies race as the central factor affecting why certain states adopt such harsh laws.\textsuperscript{133} Uggen and Manza conclude that “States with larger proportions of nonwhites in their prison populations were more likely to pass restrictive laws, even when the effects of time, region, economic competition between whites and blacks, partisan control of government, and state punitiveness (as measured by overall incarceration rates) were statistically controlled.”\textsuperscript{134} In other words, the study suggests that it is no coincidence that states with more nonwhite prisoners have harsher disenfranchisement laws.\textsuperscript{135}

The 2000 presidential election provided a stark example of the impact of felony disenfranchisement laws. George W. Bush won the state of Florida by a narrow 537-vote margin amidst widespread accusations of fraud and manipulation. Later, it was discovered that tens of thousands of citizens in Florida had been erroneously purged from voter rolls because a botched

\begin{footnotesize}
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\item \textsuperscript{130} Carbó, supra note 126.
\item \textsuperscript{131} Id.
\item \textsuperscript{132} Id.
\item \textsuperscript{133} Christopher Uggen, Jeff Manza and Angela Behrens, \textit{Ballot Manipulation and the Menace of Negro Domination: Racial Threat and Felon Disenfranchisement in the United States, 1850-2002}, \textit{American Journal of Sociology} (November 2003).
\item \textsuperscript{134} Id.
\item \textsuperscript{135} See Id.
\end{itemize}
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database said they had criminal records. Florida’s disenfranchisement laws kept over 600,000 non-incarcerated citizens with felony convictions from voting in 2000 – more than a thousand times the margin by which Bush won the state. Those 600,000 potential voters were disproportionately people of color, mostly African-American. African-Americans made up 28 percent of those disenfranchised voters – double their rate in Florida’s overall population. Latinos made up at least another 17 percent. About 31 percent of Florida’s black men are banned from voting, for life, because of a criminal conviction in their past.

A growing coalition of voting rights advocates, criminal justice reformers and ex-prisoners have come together to challenge felony disenfranchisement laws. Victories have been scored in a number of states in recent years, and momentum is building to end felony disenfranchisement across the country. An eight-member coalition of advocacy and legal rights groups have launched Right to Vote, a national campaign to restore voting rights to ex-prisoners. Eventually, voting rights advocates would like to see the abolition of all criminal disenfranchisement laws – a complete and final separation of state election rules from the criminal justice system.

As discussed in Part II, few people released from prison and jail are able to overcome the challenges of collateral consequences, and most return to criminal behavior and, ultimately, are returned to prison. For these reasons, the issue of reentry is largely about the lives of people in a

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136 Carbó, supra note 126.
137 According to investigative journalist Greg Palast, 57,700 Floridians were purged from voter registries, 90.2% of whom had no criminal records, and 54% of whom were Black or Hispanic. See The Best Democracy Money Can Buy, PLUME (2003).
138 Id.
139 Id.
140 Id.
141 The coalition includes the National Association for the Advancement of Colored People (NAACP), the NAACP Legal Defense Fund, D’emos, the Brennan Center for Justice at NYU School of Law, The Sentencing Project, the Mexican American Legal Defense and Education Fund, People for the American Way, and the American Civil Liberties Union.
disproportionately few communities where people who have been incarcerated are concentrated. Any strategy to address this issue must go beyond individual releasees, or offender populations generally, and even when the person is still in prison or jail, have in mind the places to which that person will return. Reintegrating prisoners successfully means assisting not just individuals, but whole communities, so that they have the capacity to absorb their returning residents and to keep their neighborhoods safe. High concentrations of ex-offenders in certain neighborhoods and movement of individuals in and out of prisons has a destabilizing impact on communities that are already ravaged by drugs, crime, and poverty. The negative consequences for families, communities, and American society must not be ignored. Protecting the rights of all citizens – including ex-offenders – to fully participate in our society is an important factor in maintaining a healthy democracy.

VI. HOLISTIC ADVOCACY

Although the meaning of the term “holism” can vary widely by author and discipline, one author offers the following as a working definition. Holism is the belief that reality should be seen in terms of interacting and interdependent "wholes" rather than isolated and independent parts. The whole helps determine the nature of the individual parts, and vice versa, and a part cannot be conceived in total isolation from the whole. “The very act of isolating parts from the whole changes both, in fact, as the separation creates entirely different objects from their prior integrated existence.” Many would agree with the author’s

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142 See, e.g., Louis Caruana, Holism and the Understanding of Science: Integrating the Analytical, Historical, and Sociological vii (2000) (noting that "there is no clear consensus as to the meaning of" holism).
144 Id., supra note 143,
145 Id.
146 Id.
summation that the idea of holism is most frequently associated with the phrase, “the whole is
greater than the sum of its parts.”147

While defense attorneys are usually in the best position to advise clients about the
consequences of criminal convictions, many believe that there is a role for other participants in
the criminal justice system, to increase awareness of collateral consequences.148  Most advocates
believe that this awareness must start with a fundamental shift in how courts treat collateral
consequences.149  “Courts must recognize that most ‘collateral’ consequences are real and
automatic, and cannot be distinguished from ‘direct’ consequences.”150

Although awareness of collateral consequences has continued to increase over the last
few years, a number of obstacles stand in the way of ensuring that a defendant has full
knowledge of the potentially devastating effect of collateral consequences. Collateral
consequences are in large part difficult to address because they exploit the specialization that has
become a hallmark of the legal profession.151  These consequences occur across a wide array of
substantive legal fields, confounding the ability of criminal jurists, practitioners and the public
they serve to appreciate fully all relevant repercussions.152  Areas of law such as housing,
employment, and immigration can be enormously complex and difficult to grasp.153  And the
fact that criminal defendants are mostly represented by public defenders and court-appointed
attorneys with high case loads and limited resources exacerbates the difficulty even further.154

147 Id.
149 See, e.g., Partners in Justice, supra note 1; See also Miedel, supra note 148.
150 Miedel, supra note 148.
151 Partners in Justice, supra note 1.
152 Id.
153 Miedel, supra note 148.
154 Id.
The core of holistic advocacy is a commitment to “client-centered” practice.\footnote{Client-centered means empowering clients to identify the challenges they face and to work with advocates to overcome those obstacles. Robin G. Steinberg, Beyond Lawyering: How Holistic Representation Makes for Good Policy, Better Lawyers and More Satisfied Clients, Partners in Justice Colloquium on Developing Collaboration Among Courts, Law School Clinical Programs and the Practicing Bar (May 9, 2005) available at http://courts.state.ny.us/ip/partnersinjustice/Beyond-Lawyering.pdf (last visited Dec. 3, 2006). Client-centered means empowering clients to identify the challenges they face and to work with advocates to overcome those obstacles.} In the criminal defense context, providing a zealous defense means also offering comprehensive and effective solutions to the social, psychological, and human needs that clients have.\footnote{Id.} Holistic models of advocacy include two critical components, interdisciplinary work groups and a presence in the client community.\footnote{Id.} Interdisciplinary work groups utilize interdisciplinary teams of lawyers with different specialties as well as social workers, investigators, psychologists, job developers, community organizers, and other support staff as required by the needs of individual clients.\footnote{Id.} In her work with the Bronx Defenders, Robin Steinberg finds that clients are well served by the collaboration with social workers and other mental health experts. Because lawyers and social workers are trained differently, social workers “ask different questions and focus on things lawyers often miss or undervalue.”\footnote{Steinberg, supra note155, at 7.}

According to Steinberg, “many lawyers resist multidisciplinary practices for fear of losing control and power over the case and the client.”\footnote{Id. at 6.} She attributes this resistance to, among other things, a lack of collaborative practice in law school training.\footnote{Id.} Miedel concurs, noting that “law schools tend to have fairly conventional notions of legal advocacy and ideas of how to teach them.”\footnote{Miedel, supra note 148, at 5.} He advocates that law schools assume a greater responsibility for teaching

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155 Client-centered means empowering clients to identify the challenges they face and to work with advocates to overcome those obstacles. Robin G. Steinberg, Beyond Lawyering: How Holistic Representation Makes for Good Policy, Better Lawyers and More Satisfied Clients, Partners in Justice Colloquium on Developing Collaboration Among Courts, Law School Clinical Programs and the Practicing Bar (May 9, 2005) available at http://courts.state.ny.us/ip/partnersinjustice/Beyond-Lawyering.pdf (last visited Dec. 3, 2006). Client-centered means empowering clients to identify the challenges they face and to work with advocates to overcome those obstacles.

156 Id.

157 Id. The Bronx Defenders, where Ms. Steinberg is the Executive Director, is houses in a single building social workers, criminal defense lawyers, civil lawyers specializing in child welfare, housing, and immigration, and youth and community outreach staff. The office is also located in the South Bronx where most of its clients live.

158 Id.

159 Steinberg, supra note155, at 7.

160 Id. at 6.

161 Id.

162 Miedel, supra note 148, at 5.
collateral consequences in doctrinal courses such as criminal law and criminal procedure, as well as offering practical training through law school clinics in order to better prepare future prosecutors and defenders.  

To expand the holistic legal mindset further requires that defense attorneys incorporate the full ramifications of criminal convictions into all aspects of their practices. Including collateral consequences serves two purposes: (i) Information regarding these consequences provides clients with all pertinent factors necessary to make a truly informed decision about how to proceed with the case, and (ii) defense attorneys’ knowledge of these consequences elevates the provision of legal services by placing the representation in a broader context. This gives counsel a broader and deeper perspective within which to evaluate all aspects of the particular case. A thorough knowledge of collateral consequences would enrich not only the information attorneys impart to clients, but also the strategies they would use throughout the representation.

Some believe that as part of the holistic philosophy, defender organizations should also play a role in the reentry component. A true holistic mindset needs to recognize the relevance of the back-end reentry process to the front-end process of representation. Just as the holistic model incorporates the client's legal and social needs into the representation, it should also recognize those same needs in the client's transition back into his or her community. These needs exist regardless of the client's sentence, although they are obviously more acute if the

163 Steinberg, supra note 15, at 6.
165 Id.
166 Id.
167 Id.
168 Pinard, supra note 164, at 1087.
169 Id.
170 Id.
individual has been incarcerated. Because one of the chief goals of holistic advocacy is to address issues that contributed to the client's entanglement in the criminal justice system, with the aim of preventing any future involvement, critically examining and fostering the reentry component is vital to the integrity of those front-end defense services.

Steinberg asserts that by leveraging information about clients and their circumstances, holistic advocates can provide opportunities to help people solve the problems that drive them into the criminal justice system, and thereby, lower recidivism. She believes that judges make critical decisions without understanding the challenges confronting defendants, and that holistic advocacy provides judges with the tools and assurances they need to comfortably render pro-defense decisions. Recent efforts by those in the criminal justice system to focus on these issues is perhaps a step closer to "an acknowledgment by courts that collateral consequences of convictions are actual consequences will be the engine that drives education and awareness for all the other players in the criminal justice system."

VII. CONCLUSION

By expanding on the work done by Christine Tramontano and Jill Janeczko, this paper seeks to present a broad picture of the current state of collateral consequences of criminal conviction by discussing the disturbing number of individuals currently incarcerated or under the supervision of the criminal justice system and the equally disturbing rates of recidivism. This paper outlines specific collateral consequences in the five states and explores the devastating effect of collateral consequences on families and on minority and disadvantaged communities. Finally, this paper discusses the benefits of holistic advocacy as a means of providing needed

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171 Pinard, supra note 164, at 1087.
172 Id.
173 Steinberg, supra note 155, at 7.
174 Id. at 8-9.
175 Miedel, supra note 148, at 10.
services, solving problems, and strengthening families and communities, which can ultimate lead to reducing the number of incarcerated individuals and lowering recidivism.

In addition to the information presented in the body of this paper, three tables are presented as an Appendix. Table I is a State Report Card, Table II summarizes collateral consequences in the five reviewed states – Indiana, New Jersey, New York, Ohio, and Pennsylvania, and Table III summarizes the federal statutes imposing collateral sanctions.
Appendix

Table I

Collateral Consequences of Criminal Conviction – State Report Card

<table>
<thead>
<tr>
<th>STATE</th>
<th>Employment</th>
<th>Public Assistance</th>
<th>Access to Records</th>
<th>Voting</th>
<th>Public Housing</th>
<th>Parenting</th>
<th>Driver’s License</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana</td>
<td>9.0</td>
<td>10</td>
<td>6.0</td>
<td>3.0</td>
<td>5.0</td>
<td>0</td>
<td>4.0</td>
<td>37</td>
</tr>
<tr>
<td>New Jersey</td>
<td>4.0</td>
<td>7.0</td>
<td>3.0</td>
<td>5.0</td>
<td>5.0</td>
<td>10</td>
<td>5.0</td>
<td>39</td>
</tr>
<tr>
<td>New York</td>
<td>-5.0</td>
<td>0</td>
<td>7.0</td>
<td>4.0</td>
<td>0</td>
<td>0</td>
<td>4.0</td>
<td>10</td>
</tr>
<tr>
<td>Ohio</td>
<td>2.5</td>
<td>0</td>
<td>4.0</td>
<td>3.0</td>
<td>5.0</td>
<td>0</td>
<td>5.0</td>
<td>19.5</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>5.0</td>
<td>0</td>
<td>5.0</td>
<td>5.0</td>
<td>5.0</td>
<td>10</td>
<td>5.0</td>
<td>35</td>
</tr>
</tbody>
</table>

1 After Prison: Roadblocks to Reentry, A Report on State Legal Barriers Facing People with Criminal Records, Legal Action Center (2004) available at http://www.lac.org/roadblocks/html (last visited Nov. 27, 2006). The scoring methodology assigns points based on the degree to which a state impedes or facilitates reentry. The higher the score, the worse the performance. New York received the best grade with a score of 10 roadblocks. Colorado was the worst performing of all the states with a score of 48 roadblocks.
<table>
<thead>
<tr>
<th>Category</th>
<th>Indiana</th>
<th>New Jersey</th>
<th>New York</th>
<th>Ohio</th>
<th>Pennsylvania</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoptive and Foster Parenting</td>
<td>Criminal records checks are included in pre-adoption investigations but do not create automatic bars for prospective adoptive parents. Ind. Code § 31-19-2-7.5.</td>
<td>Applicants for both foster care and adoption will be barred for convictions for the attempt, conspiracy, or commission of violent, sexual, and theft-related offenses. N.J. Stat. Ann. § 30:4C-26.8(d).</td>
<td>Applicants for both foster care and adoption. may be disqualified based upon any criminal charge or conviction. N.Y. Soc. Serv. Law § 378-a(2)(e)(3).</td>
<td>Prospective foster and adoptive parents may be barred by convictions for or guilty pleas to other felony offenses, including kidnapping, burglary, and food adulteration. Ohio Rev. Code Ann. §§ 2151(C)(1) and (2).</td>
<td>Prospective foster and adoptive parents are barred by the commission or the attempt, solicitation, or conspiracy to commit other violent and sexual misdemeanor and felony offenses and must also exclude individuals based upon drug-related felony convictions within the 5-year period preceding application. The drug-felony bar goes further than the discretionary federal law because the state law is mandatory. 23 Pa. Cons. Stat. Ann. § 6344(c) and 55 PA. Code § 3490.123(d)(2).</td>
</tr>
<tr>
<td>Absolute bar from foster parenting based on conviction for violent and weapons-related offenses. May be barred based on any felony. Ind. Code § 12-17.4-4-11(a).</td>
<td>There is a lifetime bar from becoming foster and/or adoptive parents for specific violent, sexual, and theft-related offenses. A five-year bar also exists for convictions for the attempt, conspiracy, and commission of less serious theft-related offenses. N.J. Stat. Ann. §§ 30:4C-26.8(d) and (e).</td>
<td>The state statute is silent on the length of the bars for both foster care and adoption so they operate as lifetime bars unless the authorized agency exercises its discretion. N.Y. Soc. Serv. Law § 378-a(2)(e)(3).</td>
<td>The state statute is silent on the length of the bars for both foster care and adoption so they operate as lifetime bars unless the individual meets rehabilitation standards. Ohio Rev. Code Ann. §§ 2151(C)(1) and (2).</td>
<td>The state statute is silent on the length of the bars for both prospective foster and adoptive parents for the commission or the attempt, solicitation, or conspiracy to commit other violent and sexual misdemeanor and felony offenses, so they operate as lifetime bars. 23 Pa. Cons. Stat. Ann. § 6344(c) and 55 PA. Code § 3490.123(d)(2).</td>
<td></td>
</tr>
</tbody>
</table>
### Appendix

**Table II**

**Collateral Consequences of Criminal Conviction – State Profiles***

<table>
<thead>
<tr>
<th>Category</th>
<th>Indiana</th>
<th>New Jersey</th>
<th>New York</th>
<th>Ohio</th>
<th>Pennsylvania</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicants for foster care and adoption may not be barred by convictions</td>
<td>Applicants for both foster care and adoption may be barred if other</td>
<td>Applicants may be barred if other household members have any of the</td>
<td>Applicants for foster parent licensure may be barred if other</td>
<td>Anyone over the age of 18 residing in the home must submit criminal</td>
<td></td>
</tr>
<tr>
<td>of other household members. Ind. Code §§ 12-17.4-4-11 and 31-19-2-7.5.</td>
<td>adult household members have any of the convictions that would</td>
<td>convictions(s) or conviction(s). N.Y. Soc. Serv. Law § 378-a(2)(e)(3)(B).</td>
<td>household members have any of the convictions that would</td>
<td>history records every 24 months. 23 Pa. Cons. Stat Ann. § 6344(c) and 55</td>
<td>will consider the applicant’s criminal record in addition to other</td>
</tr>
<tr>
<td></td>
<td>disqualify the applicant if s/he were the one convicted. N.J. Stat.</td>
<td></td>
<td>disqualify the applicant if s/he were the one convicted. Ohio Rev.</td>
<td>Pa. Code § 3490.123(d)(2).</td>
<td>criteria. 23 Pa. Cons. Stat. Ann. § 6344(d).</td>
</tr>
<tr>
<td>Where Indiana makes individual determinations about eligibility based on</td>
<td>New Jersey does not make individual determinations about an applicant’s</td>
<td>An applicant for both foster care and adoption otherwise barred by</td>
<td>Applicants for both foster care and adoption may be approved in spite</td>
<td></td>
<td></td>
</tr>
<tr>
<td>criminal history, applicants are entitled to a written explanation of the</td>
<td>eligibility for both foster care and adoption based on the criminal</td>
<td>federal law may remain eligible if he or she can demonstrate that denial</td>
<td>of a disqualifying criminal record if the individual meets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>reasons for denial and must be granted an administrative hearing upon</td>
<td>record. N.J. Stat. Ann. 30:4C-26.8(d).</td>
<td>will create an unreasonable risk of harm to the physical or mental</td>
<td>rehabilitation standards developed by the Director of Job and Family</td>
<td></td>
<td></td>
</tr>
<tr>
<td>written request within 30 days of the notice. Ind. Code § 12-17.4-4-11(b)</td>
<td></td>
<td>health of the child and that approval will not place the child’s safety</td>
<td>Services. Ohio Rev. Code Ann. § 2151(C)(1), (C)(2), and (F).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and (c).</td>
<td></td>
<td>in jeopardy and will be in the child’s best interests. N.Y. Soc. Serv.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Law §§ 378-a(2)(e)(1)(A) and (2)(e)(4) and (5).</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>In addition, authorized agencies will balance factors such as the duties</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>of foster/adoptive parents, time elapsed since the criminal record, and</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>the person’s age at the time of conviction before barring applicants</td>
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<tr>
<td></td>
<td></td>
<td>based upon any charge or conviction (consistent with Article 23-A of</td>
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<td></td>
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</tbody>
</table>

*This table provides an overview of collateral consequences of criminal convictions in different states regarding foster care and adoption eligibility. The table includes state-specific laws and policies, as well as guidance on administrative hearings and individual determinations. Additional notes on specific states and their policies are included at the end of the table.*
## Appendix

### Table II

**Collateral Consequences of Criminal Conviction – State Profiles**

<table>
<thead>
<tr>
<th>Category</th>
<th>Indiana</th>
<th>New Jersey</th>
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<th>Ohio</th>
<th>Pennsylvania</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Access to Criminal Records</strong></td>
<td>Indiana has a time limit after which criminal history information is not reported to non-law enforcement entities for employment purposes. With few exceptions, arrests less than one year old (with or without a disposition) will not be reported to non-criminal justice agencies. Ind. Code §§ 5-2-5-1(1) and 5-2-5-5. Convictions more than 15 years old also will not be disclosed if the state has sealed the individual’s criminal record. Ind. Code § 35-38-5-5.</td>
<td>New Jersey has no time limit after which criminal history information is not reported to non-law enforcement entities for employment purposes. N.J. Admin. Code tit. 13, § 59-1.2(a).</td>
<td>New York has no time limit after which criminal history information is not reported to non-law enforcement entities for employment purposes.</td>
<td>Ohio has no time limit after which criminal history information is not reported to non-law enforcement entities for employment purposes.</td>
<td>Pennsylvania does not report arrests more than three years old where no conviction occurred and there are no pending proceedings. 18 Pa. Cons. Stat. Ann. § 9121(b).</td>
</tr>
</tbody>
</table>
## Appendix

### Table II

Collateral Consequences of Criminal Conviction – State Profiles*

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</thead>
<tbody>
<tr>
<td>Non-criminal justice agencies and individuals can obtain records specified circumstances.(^1)</td>
<td>Law enforcement agencies will also release records to certain non-criminal justice agencies.(^2)</td>
<td>In addition to the subject of the record, New Jersey permits access to the following: (i) Governmental entities for official governmental purposes;(^3) (ii) non-governmental entities for employment, volunteer work, and performance of services; (iii) attorneys for use in lawsuits; and (iv) private detectives for statutorily-authorized functions. N.J. Admin. Code tit. 13, § 59-1.2(a).</td>
<td>Entities for employment, licensing or permit issuance purposes as authorized by Division of Criminal Justice Services statutes and regulations may obtain records. N.Y. Exec. Law § 837.</td>
<td>Criminal records may be obtained by the public with the subject’s authorization. Ohio Admin. Code § 109:5-1-01(A).</td>
<td>Non-criminal justice agencies and the public can obtain records. 18 Pa. Cons. Stat. Ann. § 9121(b).</td>
</tr>
<tr>
<td>Non-criminal justice agencies and individuals have access to limited criminal history information, including arrests and dispositions for all felonies and certain Class A misdemeanors. Arrests less than one year old (with or without a disposition) will not be generally be reported and convictions more than fifteen years old will generally not be disclosed if sealed. (^1)</td>
<td>Conviction and pending arrest records can be disclosed to non-criminal justice agencies. N.J. Admin. Code tit. 13, § 59-1.2(a).</td>
<td>Conviction and pending arrest records can be disclosed to non-criminal justice agencies. N.J. Admin. Code tit. 13, § 59-1.2(a).</td>
<td>Conviction violations, misdemeanor and felony convictions, and juvenile offender adjudications involving the criminal justice system can be disclosed to non-criminal justice agencies. N.Y. Comp. Codes R. &amp; Regs. tit. 9, § 486.2(e); N.Y. Crim. Proc. Law § 720.20(3), (4); N.Y. Penal Law § 60.10; and N.Y. Fam. Ct. Act § 306.2(1), (2).</td>
<td>With the subject’s authorization, information pertaining to adult misdemeanor and felony convictions and juvenile delinquency adjudications for violent offenses or acts that if committed by an adult would have been felonious can be disclosed to non-criminal justice agencies. Ohio Rev. Code Ann. § 109.57(A)(1).</td>
<td>Arrest and conviction information except arrests more than three years old with no disposition or pending proceedings can be disclosed to non-criminal justice agencies? 18 Pa. Cons. Stat. Ann. §§ 9102 and 9121.</td>
</tr>
</tbody>
</table>

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\(^1\) Such as when an individual has applied for employment or a license, is a candidate for public office or is a public official, is being apprehended or placed under arrest or investigation, is sought for child support, has been required to register as a sex and violent offender; or has been convicted of certain sexual offenses.

\(^2\) Federally chartered or insured financial institutions; state and local governments for employment and licensing purposes; and certain segments of the securities industries.

\(^3\) Governmental purpose include employment, licensing, and procurement of services.
## Appendix

### Table II

**Collateral Consequences of Criminal Conviction – State Profiles**

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<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>State criminal records of currently incarcerated and discharged individuals available at <a href="http://www.IN.gov/serv/indcorrection_ofs">http://www.IN.gov/serv/indcorrection_ofs</a>.</td>
<td>Records of prisoners in corrections facilities and those on parole are available at <a href="http://www.state.nj.us/corrections">http://www.state.nj.us/corrections</a>.</td>
<td>Individuals sentenced to state prison since the early 1970's are listed at <a href="http://nysdocs.docs.state.ny.us/kinqw00">http://nysdocs.docs.state.ny.us/kinqw00</a>.</td>
<td>Records of currently incarcerated, paroled, and released individuals are available on the Department of Corrections’ website at <a href="http://www.drc.state.oh.us/search2.htm">http://www.drc.state.oh.us/search2.htm</a>.</td>
<td>Only the records of those currently incarcerated are available on the internet. See <a href="http://www.cor.state.pa.us/cgi-bin/locator.pl">http://www.cor.state.pa.us/cgi-bin/locator.pl</a>.</td>
</tr>
</tbody>
</table>
## Appendix
### Table II
### Collateral Consequences of Criminal Conviction – State Profiles*

<table>
<thead>
<tr>
<th>Category</th>
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<th>New Jersey</th>
<th>New York</th>
<th>Ohio</th>
<th>Pennsylvania</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Indiana allows state criminal records of arrests not leading to conviction to be sealed. Individuals can petition for expungement if no criminal charges are filed or if a case is dismissed because of mistaken identity, no offense was committed or an absence of probable cause was found, provided there are no prior arrests other than minor traffic offenses and no proceedings are pending against the person. Ind. Code § 35-38-5-1.</td>
<td>With limited exceptions, acquittals, dismissals, and arrests that are otherwise discharged without conviction may be expunged. Yes, N.J. Stat. Ann. § 2C:52-6.</td>
<td>Arrests that did not lead to conviction may be sealed. N.Y. Crim. Proc. Law § 160.50(1).</td>
<td>Arrests that did not lead to conviction may be sealed. Ohio Rev. Code Ann. § 2953.52(A)(1).</td>
<td>If no disposition has been received or recorded within 18 months after the date of arrest, it may be expunged if the court certifies that no disposition is available and no action is pending. Such nonconviction data may also be expunged upon court order. 18 Pa. Cons. Stat. Ann. § 9122(a).</td>
</tr>
<tr>
<td></td>
<td>Expunged arrests are not reported by the state criminal justice repository but remain in court records and any record made at the time of the arrest (such as a police blotter entry). Ind. Code § 35-38-5-3.</td>
<td>If an arrest record is expunged, the person can deny the existence of the arrest. N.J. Stat. Ann. § 2C:52-27.</td>
<td>The individual can deny the existence of the arrest, unless the individual is applying for a law enforcement job. N.Y. Crim. Proc. Law § 160.60.</td>
<td>Private and public employers and occupational licensing authorities may not ask about or consider sealed arrests. If sealed, the individual may deny the existence of the arrest. Ohio Rev. Code Ann. § 2953.55(A).</td>
<td>Certain drug-related charges that are withdrawn, dismissed, or for which the individual is acquitted may also be expunged. Expungement is available once as a matter of right; thereafter, individuals must petition for expungement. 35 Pa. Stat. Ann. § 780-119(a) and (c).</td>
</tr>
</tbody>
</table>

*No person shall be permitted to learn of an expunged drug-related charge either directly or indirectly, including for licensing purposes. 35 Pa. Stat. Ann. § 780-119(b).*
## Appendix

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**Collateral Consequences of Criminal Conviction – State Profiles***

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Conviction records can be sealed if 15 years have passed since the date of discharge from probation, imprisonment or parole for the last conviction of a crime.</strong> Ind. Code § 35-38-5-5.</td>
<td>Individuals may petition for expungement after two years if found guilty of violating municipal ordinances, after five years if convicted of disorderly or petty disorderly persons offenses, and after ten years for many adult criminal convictions except for certain violent, sexual, and drug-related convictions involving sale or distribution (unless for marijuana or hashish).4 N.J. Stat. Ann. §§ 2C: 52-3 and 52-4.</td>
<td>Adult criminal convictions may not be sealed. In New York, violations, such as disorderly conduct, are not considered criminal convictions. Criminal convictions, for example, misdemeanor and felony convictions, cannot be sealed. Except for certain loitering and DWI offenses, most violation convictions may be sealed. If three years have elapsed without a subsequent drug-related conviction, violations for possession of less than 7/8 of an ounce of marijuana may be sealed. N.Y. Crim. Proc. Law §§ 160.50 and 160.55.</td>
<td>First offenders may apply for expungement three years after discharge following a felony conviction, or one year after discharge following a misdemeanor conviction. Ohio Rev. Code Ann. § 2953.36.</td>
<td>With the exception of certain sex offenders, records of individuals 70 years of age who have not been arrested or prosecuted for 10 years following final release from confinement or supervision may be expunged. 18 Pa. Cons. Stat. Ann. § 9122(b). Juvenile records may be expunged if a complaint is unsubstantiated or dismissed, after final discharge following certain waiting periods ranging from 6 months to five years, or once the individual reaches age 18 after weighing individual’s circumstances, adverse consequences of not expunging, and protection of public safety. 18 Pa. Cons. Stat. Ann. § 9123.</td>
</tr>
<tr>
<td></td>
<td>For expungement purposes, juvenile arrests and adjudications are generally treated the same as if the act had been committed by an adult, i.e., the same expungement laws apply. However, if certain criteria are met, entire juvenile delinquency records may be expunged after the passage of 5 years. N.J. Stat. Ann. § 2C:52-4.1. Individuals age 21 and under convicted of specific minor drug offenses (generally not involving sale, except for marijuana or hashish) may apply for expungement. N.J. Stat. Ann. § 2C:52-5.</td>
<td>For expungement purposes, juvenile arrests and adjudications are generally treated the same as if the act had been committed by an adult, i.e., the same expungement laws apply. However, if certain criteria are met, entire juvenile delinquency records may be expunged after the passage of 5 years. N.J. Stat. Ann. § 2C:52-4.1. Individuals age 21 and under convicted of specific minor drug offenses (generally not involving sale, except for marijuana or hashish) may apply for expungement. N.J. Stat. Ann. § 2C:52-5.</td>
<td>Records of juvenile delinquency proceedings resolved in the individual’s favor shall be sealed, unless the interests of justice require otherwise. N.Y. Fam. Ct. Act § 375.1. Individuals age 16 and over may request sealing of juvenile delinquency adjudication records (not involving designated felonies) upon written motion to the court. The court may seal such records if it is in the interests of justice. N.Y. Fam. Ct. Act § 375.2(1), (6).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4 The time elapsed is from completion of the sentence, and the individual must not have been convicted of any prior or subsequent crime.
## Appendix
### Table II
Collateral Consequences of Criminal Conviction – State Profiles*

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<tr>
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</tr>
</thead>
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<tr>
<td><strong>Driver’s License</strong></td>
<td>The state police department may not release sealed conviction records more than 15 years old to noncriminal justice agencies except that the records will remain available if the subject has volunteered to provide services to a social services or nonprofit agency involving contact with children or is being sought for child support. Ind. Code § 5-2-5-5.</td>
<td>An individual can generally deny the existence of an expunged conviction. N.J. Stat. Ann. § 2C:52-27.</td>
<td>The sealed records will not appear on the copy of the rap sheet that is sent to employers and others. N.Y. Crim. Proc. Law § 160.55(1). Individuals generally are not required to divulge juvenile delinquency proceedings or adjudications. N.Y. Fam. Ct. Act § 380.1(3).</td>
<td>Private and public employers, including occupational licensing authorities, may not ask about or discriminate based upon sealed adult convictions, unless directly-related to the position sought. Ohio Rev. Code Ann. §§ 2953.55(A) and 2953.33(B). If the adult record is sealed, the individual may deny the existence of the conviction. The record may be used for purposes of subsequent prosecution. Ohio Rev. Code Ann. § 2953.32(C)(2). If sealed, the juvenile may deny existence of the record. Ohio Rev. Code Ann. § 2151.358(E)(1).</td>
<td>“Expunge” means to physically remove the records such that they never existed. 18 Pa. Cons. Stat. Ann. § 9102.</td>
</tr>
</tbody>
</table>

Sealed juvenile records will not be released to anyone other than the subject of the record. A court may not order release of the record unless the subject challenges its existence. Ind. Code § 5-2-5-14. Drivers’ licenses will be suspended for drug-related offenses. Ohio Rev. Code Ann. § 4507.169(A). |


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*Expunge” means to physically remove the records such that they never existed. 18 Pa. Cons. Stat. Ann. § 9102.*
## Appendix

### Table II

Collateral Consequences of Criminal Conviction – State Profiles*  

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</thead>
<tbody>
<tr>
<td>The length of the revocation ranges from six months to 2 years, depending on the order of the sentencing court. Ind. Code § 35-48-4-15.</td>
<td>The length of the revocation ranges from six months to two years. N.J. Stat. Ann. § 2C:35-16.</td>
<td>For drug-related offenses, revocation is for six months. N.Y. Veh. &amp; Traf. Law § 510(2)(b)(v). For driving while impaired, 90 days for the first conviction or six months for a prior conviction within the previous five years or two prior convictions within the previous ten years; for driving while intoxicated or ability impaired by drugs - six months for a first conviction or one year for a prior conviction within the previous ten years. N.Y. Veh. &amp; Traf. Law § 1193(2).</td>
<td>The length of the revocation ranges is generally six months and twenty-one days. Ohio Rev. Code Ann. § 4507.169(A).</td>
<td>The length of the revocation ranges is six months for first offense, one year for second offense, and two years for third and subsequent offenses. 75 Pa. Cons. Stat. Ann. §§ 1532(b)(3) and (c)(1).</td>
<td></td>
</tr>
</tbody>
</table>

⁵ Including youthful offender and juvenile adjudications, unless compelling circumstances exist for an exception.
<table>
<thead>
<tr>
<th>Category</th>
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<th>New Jersey</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td>Indiana offers restricted drivers’ licenses for purposes of employment, education, and/or medical care. Restricted driving permits may be available for employment purposes if the suspension would work an undue hardship and burden on the individual’s family and dependents. Ind. Code § 9-24-15-2(2).</td>
<td>New Jersey does not offer restricted drivers’ licenses for purposes of employment, education, and/or medical care.</td>
<td>Restricted use licenses are available for purposes of employment, education, and medical treatment at the discretion of the commissioner of motor vehicles. N.Y. Veh. &amp; Traf. Law § 530.</td>
<td>Individuals may petition for occupational licensing privileges if he or she can demonstrate the suspension will seriously affect the ability to continue employment. Ohio Rev. Code Ann. § 4507.16(F)(2).</td>
<td>Driver’s licenses limited to occupational purposes are not available to individuals convicted of driving under the influence or other drug-related offenses until the period of suspension or revocation has been served. 75 Pa. Cons. Stat. Ann. § 1553(d)(6) and (10).</td>
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<td></td>
<td>Indiana allows employers to ask job applicants about arrests not leading to conviction.</td>
<td>New Jersey allows employers to ask job applicants about arrests not leading to conviction.</td>
<td>Except for law enforcement, most private and public employers and occupational licensing authorities may not ask about arrests that did not lead to conviction. N.Y. Exec. Law § 296(16).</td>
<td>Private and public employers and occupational licensing authorities may not ask about sealed arrests. Ohio Rev. Code Ann. § 2953.55(A).</td>
<td>Pennsylvania does not prohibit asking about arrests not leading to conviction but felony and misdemeanor convictions may only be considered to the extent they relate to the applicant’s suitability for the position. 18 PA. Cons. Stat. Ann. § 9125.</td>
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<td>Employers may consider arrests not leading to conviction in hiring decisions.</td>
<td>Employers may consider arrests not leading to conviction in hiring decisions.</td>
<td>Except for law enforcement, most private and public employers and occupational licensing authorities may not &quot;act adversely upon&quot; arrests that did not lead to conviction. N.Y. Exec. Law § 296(16).</td>
<td>Private and public employers and occupational licensing authorities may not consider sealed arrests. Ohio Rev. Code Ann. § 2953.55(A).</td>
<td>Employers may only consider felony and misdemeanor convictions to the extent they relate to the applicant’s suitability for the position. (See above). 18 PA. Const. Stat. Ann. § 9125.</td>
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### Table II

**Collateral Consequences of Criminal Conviction – State Profiles**

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<td>An occupational license may not be denied, revoked or suspended solely because of conviction record. The conviction record may be considered as to whether the applicant or holder should be entrusted to serve the public in a specific capacity. Ind. Code § 25-1-1.1-1. However, there is no standard for public employers.</td>
<td>There are no employment discrimination standards relating to public employers. Occupational licensing authorities may not discriminate on the basis of a criminal conviction or disorderly person adjudication unless the conviction or adjudication disqualifies the individual from public office or relates adversely to the license sought. (See N.J. Stat. Ann. § 2C:51-2 regarding forfeiture of public office.) The licensing authority must consider several factors, including rehabilitation, in determining the applicant’s suitability for licensure. The applicant is entitled to a written explanation of the reasons for denial. N.J. Stat. Ann. § 2A:168A-2.</td>
<td>Except for law enforcement, public employers and occupational agencies may not bar individuals based upon criminal convictions unless job-related or the applicant poses a direct threat to public safety or property. Evidence of rehabilitation must be considered, including certificates of good conduct and certificates of relief from disabilities. If denied employment or licensure based upon a conviction, the applicant is entitled to a written statement of the reasons for denial. N.Y. Correct. Law §§ 750-54.</td>
<td>There are no employment discrimination standards unless the conviction is sealed. Employers and occupational licensing agencies, with the exception of boards of education and joint vocational school districts, may not inquire about a sealed conviction unless it bears a direct relationship to the job. Ohio Rev. Code Ann. § 2953.2(C) and (G).</td>
<td>Public employers may consider only job-related felony and misdemeanor convictions. 18 Pa. Cons. Stat. Ann. § 9125(b). Occupational licensing agencies may consider any felony but only job-related misdemeanor convictions. 18 Pa. Cons. Stat. Ann. § 9124(c). The applicant is entitled to a written explanation if denied employment based upon a criminal history or licensure based upon a conviction. 18 Pa. Cons. Stat. Ann. §§ 9124(d) and 9125(c).</td>
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<td></td>
<td>Indiana does not have standards prohibiting employment discrimination by private employers based on a conviction record.</td>
<td>New Jersey does not have standards prohibiting employment discrimination by private employers based on a conviction record.</td>
<td>Private employers of more than 10 employees may not bar individuals based upon criminal convictions unless job-related or the applicant poses a direct threat to public safety or property. Evidence of rehabilitation must be considered, including certificates of good conduct and certificates of relief from disabilities. If denied employment or licensure based upon a conviction, the applicant is entitled to a written statement of the reasons for denial. N.Y. Correct. Law §§ 750-54.</td>
<td>There are no discrimination standards unless the conviction is sealed. For convictions that are sealed, employers and occupational licensing agencies, with the exception of boards of education and joint vocational school districts, may not inquire about a sealed conviction unless it bears a direct relationship to the job. Ohio Rev. Code Ann. § 2953.2(C) and (G).</td>
<td>Pennsylvania does not have standards prohibiting employment discrimination by private employers based on a conviction record. However, courts have indicated that it is against public policy to summarily reject a person for employment on the basis of his or her criminal record. See e.g. EV v. Southeastern Pennsylvania Transp. Authority, 297 F.Supp. 758 (E.D. Pa 2003).</td>
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<td>Individuals convicted of theft within the last ten years, rape, criminal deviate conduct, exploitation of an endangered adult, or failure to report battery, neglect, or exploitation of an endangered adult may not be employed by home health care agencies. Ind. Code § 16-27-2-5.</td>
<td>Individuals may be barred from home health care employment based upon criminal or disorderly persons convictions against the family, children, or incompetents, or involving theft, controlled substances, or danger to the person. A right to appeal exists based upon rehabilitation or accuracy of the record. N.J. Stat. Ann. §§ 45:11-24.3 and 24.4.</td>
<td>New York does not restrict people with criminal records from employment in the field of home health care.</td>
<td>Individuals will be barred from home health care employment by guilty pleas and convictions for certain violent, sexual, theft, weapons, and drug-related offenses, including food adulteration (in Ohio, or substantially equivalent offenses in other state or federal jurisdictions). Ohio Admin. Code § 3701-60-06.</td>
<td>State law currently bars applicants with certain violent, sexual, drug- and theft-related felony offenses or two or more theft-related misdemeanor offenses from home health care employment. 35 P.S. §§ 10225.103 and 10225.503.</td>
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<td>6 Unless granted an unconditional pardon for the offense, if the conviction or guilty plea has been set aside, or if granted a conditional pardon and the conditions have been satisfied. Home health care agencies may also employ individuals who would otherwise be barred if the individual can demonstrate sufficient evidence of personal character or rehabilitation by meeting all certain standards.</td>
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<td>In 2003, the state’s Commonwealth Court held this bar to be an unconstitutional violation of the right to work. Following the decision, the state issued an interim policy permitting ex-offenders to work in long term care facilities if they have five years of care giving experience since conviction or release from incarceration, whichever is later. The interim policy is expected to remain in effect until the legislature passes a revised law to comply with the ruling.</td>
<td>7 Nixon v. Commonwealth ,576 Pa. 385, 839 A.2d 277 (Pa. 2003). The court found the bar unconstitutional because (i) it lacks a rational relationship to the government’s purpose of providing protection to older adults, (ii) it operates as a lifetime bar, and (iii) no procedure exists to assess work history or evidence of rehabilitation.</td>
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<tr>
<td><strong>Public Assistance and Food Stamps</strong></td>
<td>After an individual has been convicted, Indiana offers limited mechanisms to demonstrate that an individual has been rehabilitated. Only governor granted pardons are available in Indiana. Ind. Const. art. 5 § 17. A five-year waiting period and evidence of rehabilitation are required. The effect of a pardon is largely to reduce the stigma associated with the conviction. A pardon does not expunge the conviction and the information remains available to prospective employers. In recent years, only an estimated 10-20 pardons have been granted annually. A pardon does not automatically lift occupational bars.</td>
<td>After an individual has been convicted, New Jersey offers the opportunity for an individual to demonstrate that he or she has been rehabilitated. To assist an individual’s rehabilitation, the Parole Board may grant certificates of good conduct that preclude licensing authorities from disqualifying or discriminating against an applicant based upon a criminal conviction. To be eligible, the applicant must be previously paroled by the Board and two years must have elapsed since any similar application was denied. N.J. Admin. Code tit. 10A, §§ 70-8.1 et seq. Restoration of rights and pardons are also available. N.J. Stat. Ann. § 2A:167.5.</td>
<td>Certificates of relief from disabilities and certificates of good conduct are offered and automatically lift occupational bars. Certificates of relief from disabilities are available to individuals with any number of misdemeanor convictions but no more than one felony conviction. Separate certificates are necessary for each conviction. Temporary certificates are available while on probation or parole, and become permanent unless revoked. N.Y. Correct. Law §§ 700-03. Following waiting periods that vary based upon severity of the offense, certificates of good conduct are available to individuals with any number of misdemeanor convictions and two or more felony convictions. One certificate will cover all convictions. N.Y. Correct. Law §§ 700 and 703-b.</td>
<td>In Ohio, having one’s criminal record sealed serves as limited evidence of rehabilitation because the court considers whether the individual is rehabilitated before granting sealing relief. In addition, an individual may obtain a pardon under certain circumstances. Ohio Rev. Code Ann. § 2967.03. Generally 3-5% of pardon requests are granted. However, a pardon does not lift occupational bars. Telephone Interview with Heather Smith, Clemency Desk, Ohio Parole Board (August 15, 2002).</td>
<td>In Pennsylvania, a pardon is the only way to restore civil rights. PA. Const. art. 4, § 9. Two hundred and seventy pardons were granted between 1995 and 2001 to individuals with both felony and misdemeanor convictions. Since 2001, 639 pardons have been granted, generally to first-offenders. A pardon does not serve as evidence of rehabilitation or lift employment bars. However, pardoned individuals may apply for expungement of the criminal record.</td>
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<td>Indiana adopted the federal drug-felon ban. Consequently, people with drug-felony convictions dated after 1996 are ineligible to receive TANF benefits and food stamps. Indiana Client Eligibility System (ICES) Policy Manual, ch. 3200, § 3210.25.20.</td>
<td>New Jersey has modified the federal drug felon ban. Individuals convicted of drug-related offenses involving possession or use only may be eligible for benefits if currently enrolled in or successfully completed treatment. Currently enrolled individuals must submit to drug testing. Except for</td>
<td>New York completely opted out of the drug felon ban. N.Y. Soc. Serv. Law § 95.</td>
<td>Ohio opted out of the federal drug felon ban. Ohio Rev. Code Ann. §§ 5101.821 and .84.</td>
<td>Pennsylvania has opted out of the federal drug felon ban. Effective February 21, 2004, people convicted of felony drug offenses are eligible for cash or food stamps. The Department of Public Welfare is required to assess an applicant for drug and/or alcohol problems and, if the services</td>
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<tr>
<td>Public Housing</td>
<td>The Indianapolis Housing Authority considers arrests that did not lead to conviction in its admission criteria.</td>
<td>The Newark Public Housing Authority (PHA) considers arrests that did not lead to conviction in its admission criteria.</td>
<td>The New York City Housing Authority (NYCHA) does not consider arrests not leading to conviction in its admission criteria.</td>
<td>The Cuyahoga Metropolitan Housing Authority does not consider arrests not leading to conviction in its admission criteria.</td>
<td>The Philadelphia Public Housing Authority considers arrests in its admission criteria.</td>
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<td></td>
<td>The Housing Authority makes individual determinations about an applicant's eligibility based upon the relevance of the criminal record.</td>
<td>The Newark PHA will consider rehabilitation.</td>
<td>NYCHA will consider rehabilitation.</td>
<td>The Housing Authority makes no individual determinations about an applicant's eligibility based upon the relevance of the criminal record.</td>
<td>The Housing Authority makes individual determinations about an applicant's eligibility based upon the relevance of the criminal record.</td>
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<td>A 3-year bar exists for individuals evicted from public housing based upon drug-related criminal activity. However, that period may be shortened if the Housing Authority determines that the evicted household member successfully completed a drug rehabilitation program or the reasons relating to the eviction no longer exist (i.e., the evicted household member has died or is in prison).</td>
<td>The stated length of most bars is 3 years.</td>
<td>Bars range from 2-6 years following completion of sentence, depending on the classification of the conviction.</td>
<td>There is a three-year bar for drug-related misdemeanor and all felony convictions.</td>
<td>The Philadelphia Housing Authority imposes a three-year applications bar for persons evicted from their previous residence due to drug-related criminal activity. The bar can be overcome in individual circumstances upon proof of rehabilitation.</td>
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* Table II provides information on the collateral consequences of criminal conviction in various states for drug-related criminal activities. The table outlines the policies and procedures implemented by different housing authorities in Indiana, New Jersey, New York, Ohio, and Pennsylvania. The information includes the criteria for admission, the consequences for evictions, and the implications for rehabilitation. The table highlights the differences in approaches taken by each state, emphasizing the importance of individual determinations and the consideration of rehabilitation in some instances. The data reflects the complexities and varying responses to drug-related convictions across different states, reflecting broader social and legal policies.
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<td>Voting</td>
<td>Indiana grants people with criminal records the right to vote, but not while individuals are incarcerated following a criminal conviction. Individuals may vote upon completion of the sentence and while on probation and parole. Ind. Code § 3-7-46-2.</td>
<td>New Jersey grants the right to vote upon completion of the sentence. Individuals who are incarcerated for a criminal conviction or those on probation or parole may not vote. N.J. Stat. Ann. §§ 2C:51-3 and 19:4-1(6)-(8).</td>
<td>Individuals convicted of felony offenses who are on probation or have completed their sentence may vote. Incarcerated individuals and those on parole may not vote. N.Y. Elec. Law § 5-106(2).</td>
<td>Individuals who have completed the sentence or those on probation or parole may vote. Individuals incarcerated following a felony conviction may not vote. Ohio Rev. Code Ann. §§ 2961.01 and 5120:1-1-14(A), (B).</td>
<td>Pennsylvania grants people with criminal records the right to vote. However, individuals currently incarcerated for a felony, and individuals in alternative correctional facilities, such as halfway houses, on pre-release for a felony conviction who will not be released before the next election, may not vote. 25 Pa. Cons. Stat. Ann. § 1301(a); see Mixon v. Commonwealth, 566 Pa. 616, 783 A.2d 763 (2001), <a href="http://www.dos.state.pa.us/dos/lib/dos/20/convicted_felon_brochure_website.pdf">http://www.dos.state.pa.us/dos/lib/dos/20/convicted_felon_brochure_website.pdf</a>.</td>
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### Appendix

#### Table III

Federal Statutes Imposing Collateral Consequences based on Criminal Conviction*


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<th>Category</th>
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<tr>
<td>Civic Rights</td>
<td>Right to vote</td>
<td>Qualifications for voting in federal elections are determined by state law. U.S. Const. art. I, § 2, cl. 1; art. I, § 4; art. II, § 1, cl. 2; amend. XVII. <em>See also</em> Voting Rights Act, 42 U.S.C. §§ 1971 – 1973 gg-10. The power of the states to deny the right to vote because of participation in a crime is expressly recognized in the Fourteenth Amendment. The great majority of states impose some type of restriction on the ability of convicted felons to vote. The claim that felon disenfranchisement provisions are racially discriminator and, therefore, violate the Constitution and/or the Voting Rights Act has been litigated and rejected. <em>See, e.g.</em> Baker v. Pataki, 85 F.3d 919 (2d Cir. 1996); Wesley v. Collins, 791 F.2d 1255 (6th Cir. 1986); Farrakhan v. Locke, 987 F. Supp. 1304 (E.D. Wash. 1997); Texas Supporters of Workers World Party Presidential Candidates v. Strake, 511 F.Supp. 149 (S.D. Tex. 1981). Similarly, claims that such laws are irrational, and therefore, in violation of the equal protection clause of the Fourteenth Amendment have also been litigated and rejected. <em>United States v. Green</em>, 995 F.2d 793 (8th Cir. 1993).</td>
<td>A presidential pardon restores civil rights lost as a result of a federal conviction, including the rights to vote, to serve on a jury, and to hold public office, and generally relieves other disabilities that attach solely by reason of the commission or conviction of the pardoned offense. <em>See Ex parte Garland</em>, 71 U.S. 333 (1866); Opinions of the Office of Legal Counsel, United States Department of Justice, June 19, 1995, <em>Effects of a Pardon. See also Carlesi v. New York</em>, 233 U.S. 51 (1914). There is no general federal statutory procedure whereby civil rights may be restored after conviction or judicial records of an adult federal criminal conviction expunged. The loss of civil rights generally occurs as a matter of state law and thus those rights may be restored by state action as well as by a presidential pardon.</td>
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<td>Right to serve on a federal jury</td>
<td>Conviction in federal or state court of a crime punishable by imprisonment for more than one year disqualified an individual from serving on a federal grand or petit jury if “his civil rights have not been restored.” 28 U.S.C. § 1865(b)(5).</td>
<td>The only method currently provided by federal law to restore civil rights is a pardon. This provision has generally been interpreted to require an affirmative act, such as a state or presidential pardon, before the right will be reinstated. Therefore, automatic restoration that occurs in many states will not operate to restore the right to serve on a federal jury. <em>See, e.g. United States v. Hefner</em>, 842 F.2d 731, 731 (4th Cir. 1988).</td>
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<tr>
<td>Employment and licensing</td>
<td>Right to hold federal office or employment</td>
<td>A number of federal statutes provide that a conviction may result in the loss of or ineligibility for office. For example: Conviction of treason (18 U.S.C. § 2381) and conviction of an offense arising from advocating the overthrow by force or violence of the federal government or the government of a state or territory or interfering with the morale or discipline of the United States armed forces (18 U.S.C. §§ 2385, 2387). Also conviction of bribing a public official or accepting a bribe (18 U.S.C. § 201(b)) or for inciting, organizing, encouraging, or participating in a riot or civil disorder (5 U.S.C. § 7313); Designated federal officers convicted of certain crimes may also be disqualified from office. <em>See, e.g. 18 U.S.C. § 1905; 18 U.S.C. § 1913.</em></td>
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<td><strong>Qualification for armed services and payment of benefits</strong></td>
<td>According to the Office of Personnel Management, (OPM), aside from specific statutory disqualification, a felony conviction does not disqualify a person from federal employment but may be a factor in determining suitability.</td>
<td>Unless an exception is made, an individual convicted of a felon is ineligible to enlist in any service of the armed services. 10 U.S.C. § 504. See also 50 U.S.C. App. § 456(m). Any person guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies forfeits all accrued and future veterans benefits. 38 U.S.C. § 6104(a). Anyone convicted of certain offenses related to espionage, treason, or subversive activities forfeits gratuitous veterans benefits payable to himself or to his dependents or survivors based on any of his military service. 38 U.S.C. §§ 6105(a)(b).</td>
<td>Exceptions to the prohibition on military enlistment of convicted felons may be authorized by the Secretary of the affected branch of the service in “meritorious cases.” 10 U.S.C. § 504.</td>
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</table>

After the first 60 days, military pensions may not be paid to an individual who is incarcerated in a federal, state, or local penal institution as a result of conviction of a felony or misdemeanor. 38 U.S.C. § 1505(a). However, lost pension may be paid to the spouse or children of the imprisoned veteran. 38 U.S.C. § 1505(b).
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<td>General occupational restrictions and disabilities</td>
<td>Under 18 U.S.C. §§ 3563(b)(5), 3583(d), and the United States Sentencing Guidelines, the sentencing court may impose occupational restrictions as a condition of probation or supervised release where a “reasonably direct relationship” exists between the defendant’s occupation and the offense conduct, and the conditions are “reasonably necessary to protect the public.</td>
<td>In addition, specific federal statutes provide that particular convictions may result in the loss of or ineligibility for certain federal licenses.</td>
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<td>A federal license may be lost upon conviction of a drug offense. 21 U.S.C. § 862(d)(1); U.S.S.G. § F1.6. A professional license may be forfeited if used to facilitate a drug offense. 21 U.S.C. § 863; <em>United States v. Dicter</em>, 198 F.3d 1284 (11th Cir. 1999), <em>cert. denied</em>, 531 U.S. 828 (2000) (state medical license).</td>
<td>Depending on the statutory provision, a felony conviction may be an absolute bar to licensure, but even if not an absolute bar, a conviction may nonetheless be a relevant consideration when an agency reviews a license application.</td>
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<td>Banking, commodities, and securities restrictions</td>
<td>A person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering may be an institution-affiliated party, own or control, or otherwise participate in the affairs of a federally insured depository institution. 12 U.S.C. §§ 1818(e), (g)(1)(c), 1829 (a). The prohibition may be waived upon the written consent of the Federal Deposit Insurance Corporation (FDIC), but consent may not be given until ten years after the date the conviction becomes final. 12 U.S.C. § 1829.</td>
<td>The FDIC may waive a conviction related prohibition to permit individuals to participate in the affairs of a federally-insured depository institution, but may not do so for ten years for certain offenses. 12 U.S.C. §§ 1829(a)(1), (a)(2)(A). The sentencing court may make an exception to the prohibition “if granting the exception is in the interest of justice.” 12 U.S.C. §§ 1818(a)(2)(B).</td>
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<td>The Securities and Exchange Commission may censure, place limitations on, suspend, or revoke the registration of any investment advisor if he or she is convicted of any felony or certain enumerated offenses such as embezzlement, perjury, bribery, and mail. 15 U.S.C. §§ 80b-3(e)(2), (e)(3), (f).</td>
<td>The disability may removed sooner if the individual’s “citizenship rights, having been revoked as result of such conviction, have been fully restored” or if a federal court or the Parole Commission so directs. 29 U.S.C. §§ 504, 1111.</td>
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<td>Labor organizations</td>
<td>Conviction of offenses, such as robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, drug violations, murder, assault with intent to kill, rape, and certain offenses relating to a labor organization or employee benefit plan, disqualifies an individual from serving in any of a wide range of capacities relating to a labor organization or employee benefit plan. 29 U.S.C. §§ 504, 1111. The disqualification continues for 13 years or the end of imprisonment, whichever is later.</td>
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<td>Participation in federal contracts or programs</td>
<td>With certain exceptions, individuals convicted of fraud or any felony arising out of a contract with the Department of Defense are prohibited for a period of not less than five years from working in a management or supervisory capacity for a defense contractor or subcontractor, or from serving on the board of directors or acting as a consultant, or being involved in any way proscribed by the Secretary of Defense. 10 U.S.C. § 2408(a); 48 C.F.R. § 252.203-7001.</td>
<td>The five-year period may be waived by the Secretary of Defense “in the interests of national security.” 10 U.S.C. § 2408(a).</td>
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<td>Mandatory and permissive exclusions from participation in a federal health care program or designated state health care program based on conviction of certain types of crimes, such as conviction of an offense relating to delivery of an item or service under the Medicare program or an state health care program and conviction of any felony offense relating to manufacturing, distributing, prescribing, or dispensing drugs, or an act or omission in a health care program that consists of fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct. 42 U.S.C. § 1320a-7.</td>
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<td>Mandatory and permissive periods of debarment from participation in the drug industry may be imposed based on conviction of certain types of crimes, including any felony or misdemeanor related to the development or approval of a drug product. The periods of debarment may be up to five years.</td>
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<td>Conviction for offenses indicating lack of business integrity or business honest such as fraud, an antitrust violation, embezzlement, theft, forger, bribery, falsification or destruction of records, etc. may result in debarment from participation in a federal contract or program. See 24 C.F.R. § 24.305; 48 C.F.R. Part 9, Subpart 9.4.</td>
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<td>Conviction of a designated crime, such as fraud, embezzlement, theft, forger, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, and other business-related crimes, is cause for debarment or suspension from participating in procurement and non-procurement programs. Executive Order No. 12,549, 16,689; 5 C.F.R. §§ 970.110(c), 970.405; 48 C.F.R. § 9.406-2. All federal agencies must participate in a system of debarment and suspension for non-procurement programs and debarment or suspension from a program or agency has a government-wide effect. Executive Order No. 12,549; 51 Fed. Reg. 6370 (1986). The period of debarment is generally not to exceed three years. 5 C.F.R. § 70.320.</td>
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<td><strong>Federal benefits</strong></td>
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<td>Drug offenders may be made ineligible for grants, licenses, contracts, and other federal benefits, excluding retirement, welfare, Social Security, health, disability, public housing, benefits based on military service, and benefits for which payments or services are required for eligibility. 21 U.S.C. § 862; U.S.S.G. § 5F1.6. The maximum period of authorized denial of benefits is shorter for drug-possession offenses than for drug-trafficking offenses, but denial of benefits is mandatory and permanent upon a third conviction for a drug-trafficking offense. 21 U.S.C. § 862(a)(1)(C).</td>
<td>The disability for drug offenders may be waived or suspended for participation in treatment programs, or for drug addicts who are rehabilitated or who enter into long-term treatment or who are prevented from entering into treatment because of its unavailability. 21 U.S.C. § 862(c). The disability does not apply to persons who cooperate with the government in connection with the prosecution of other offenders or who</td>
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<td>Anyone convicted of a federal or state felony for conduct that involved the possession, use, or distribution of drugs is not eligible to receive food stamps or temporary assistance to needy families, and the amount payable to any family or household of which such a person is a member is reduced proportionately. 21 U.S.C. § 862a(a), (b), (d)(2). States may, however, elect not to impose such a disability or may limit the period of the disability. 21 U.S.C. § 862a(d).</td>
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<td>Any person convicted of a federal or state offense involving the possession or sale of drugs is ineligible to receive any grant, loan, or work assistance for students in attendance at institutions for higher education. 20 U.S.C. § 1091(r).</td>
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<td>Persons convicted of illegally manufacturing or producing methamphetamine on the premises of federally assisted housing may be evicted and permanently barred from occupying such housing and from receiving federal low-income housing assistance. 42 U.S.C. § 1437n(f).</td>
<td>are in a government witness protection program. 21 U.S.C. § 862(e).</td>
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<td>Any person who is subject to a lifetime registration requirement under a state sex offender registration program is ineligible for federally assisted housing. 42 U.S.C. § 13663.</td>
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<td>Upon conviction of certain offenses related to the national security, an individual, his survivor, and his beneficiary may not receive an annuity or retirement pay from the United States or District of Columbia government and may be subject to additional penalties regarding his collection of old-age, survivors, or disability insurance benefits, or health insurance for the aged and disabled. 5 U.S.C. § 8312; 42 U.S.C. § 402(u)(1).</td>
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<td>A person confined for more than 30 days in a jail or penal institution upon conviction of a criminal offense may not receive old-age, survivors, or disability insurance payments for any month in which he or she was incarcerated. 42 U.S.C. § 402(x)(1)(A)(i). Persons convicted of fraud in applying for or receiving federal workers compensation benefits forfeit those benefits for any injury occurring on or before the conviction. 5 U.S.C. § 8148(a). Federal workers compensation benefits may not be paid to the offender (but may conviction. 5 U.S.C. § 8148(b)(1), (3).</td>
<td>Exceptions to the passport restriction</td>
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<td>A passport may not be issued to a person convicted of a felony federal or state drug offense if he used the passport or otherwise crossed an international boundary in committing the offense. 22 U.S.C. § 2714(a)(1), (b)(1). An already issued passport may be revoked upon conviction of a disqualifying offense. 22 U.S.C. § 2714(a)(2). The disqualification lasts during any period the person is imprisoned as a result of the conviction and during any period of parole or other supervised release after having been imprisoned as a result of conviction for such an offense. 22 U.S.C. § 2714(c). The Secretary of State may also apply the disqualification to a person convicted of a misdemeanor drug offense under federal or state law (except a person’s first conviction for a misdemeanor that involves only possession of a controlled substance) if the Secretary determines that the disqualification should apply to that person on account of that offense. 22 U.S.C. § 2714(b)(2).</td>
<td>may be granted in emergency circumstances or for humanitarian reasons. 22 U.S.C. § 2714(d).</td>
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<td>Immigration</td>
<td>An alien is ineligible for admission to the United States if he or she has been convicted of (or admits committing) a crime involving moral turpitude (unless the alien was younger than 18 when the crime was committed, he committed only one crime, the penalty for which was less than one year imprisonment and a sentence of six months or less was imposed, and the crime was</td>
<td>The Attorney General may waive the application of certain grounds for inadmissibility resulting from conviction. See, e.g., 8 U.S.C. § 1182(h) (waiver of inadmissibility authorized for certain offenses, other than aggravated felonies, if certain conditions are met), 1227(a)(7)</td>
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<td>committed (and the alien released from confinement) more than five years before applying for admission) or multiple offenses for which the aggregate sentences to confinement were five years or more. 8 U.S.C. § 1182(a)(2)(A), (B). An alien may be removed from the United States if he was inadmissible at the time of entry, 8 U.S.C. § 1227(a)(1)(A), or upon conviction of: a crime involving moral turpitude committed within five years after the date of entry (or 10 years in the case of an offender having certain lawful permanent resident status) and for which a sentence of one year or longer may be imposed; two or more crimes of moral turpitude not arising out of a single scheme; an “aggravated felony”, a drug offense (other than one involving possession for one’s own use of 30 grams or less of marijuana); a specified firearms offense; a specified offense related to national security, such as treason or espionage; a specified immigration offense; or a domestic violence offense. 8 U.S.C. § 1227(a)(2). An individual is precluded from establishing “good moral character” and is therefore disqualified from naturalization and from certain forms of relief from removal if he or she, during the required period of good behavior, was confined for 180 days or more as a result of a conviction, has at any time been convicted of an aggravated felony, or has been convicted of any conviction of a crime of domestic violence may be waived as a ground for removal in certain cases involving an alien who is also a victim of domestic violence). The Attorney General may also cancel removal of certain permanent resident aliens convicted of a criminal offense other than an aggravated felony. See, e.g., 8 U.S.C. § 1229b(a).</td>
<td>(conviction of a crime of domestic violence may be waived as a ground for removal in certain cases involving an alien who is also a victim of domestic violence).</td>
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<td>of the following offenses committed during the required period of good behavior: a crime involving moral turpitude (except crimes punishable by less than one year's imprisonment for which a sentence of six months or less was imposed); two or more offenses for which the aggregate sentence was five years or more; a drug offense (except simple possession of a small amount of marijuana); or two or more gambling offenses. 8 U.S.C. § 1101(f)(3), (5), (7), (8); 1427(a).</td>
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<td>Registration and notification</td>
<td>The growing area of sex offender registration is addressed in several federal statutes, including the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the &quot;Wetterling Act,&quot; 42 U.S.C. § 14071, and 64 Fed. Reg. 572, 3590 (implementing guidelines)) and the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, 42 U.S.C. § 14072. Every state has enacted legislation requiring convicted sex offenders to inform designated authorities of their places of residence following conviction (sometimes referred to as &quot;Megan's laws&quot;). These registration laws assist law enforcement by making available for law enforcement purposes information concerning the identity and location of convicted sex offenders. The minimum national standards for state registration programs are set forth in the Wetterling Act, which addresses such issues as</td>
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<td>the types of offenses for which registration should be required, the duration of the registration requirement, the need for periodic verification of address information and updating of registration information when a sex offender changes address, and the release of information about registrants as necessary to protect the public. Compliance with the standards of the Wetterling Act affects state eligibility for certain federal funding related to law enforcement assistance. See 42 U.S.C. § 14071(g)(2) (10-percent reduction of assistance grant funds imposed on noncompliant states). The registration laws of each state provide for some form of disclosure to members of the public of information concerning registered sex offenders (or some subset of such offenders). Examples of common methods of notification include: making available registration lists for public inspection at law enforcement offices; maintaining sex offender websites accessible by the public; and affirmatively notifying neighbors of the presence of particularly dangerous sex offenders. In addition to the standards set by the Wetterling Act for state registration programs, federal law directly imposes registration requirements on certain offenders. A sex offender registered in any state who moves to another state must notify the Federal Bureau of Investigation and the new state of residence. See 42 U.S.C. § 14072(g)(3), (i)(1). Federal authorities must notify state law</td>
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<td>Federal firearms</td>
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<td>enforcement and registration authorities when a federal prisoner who is a sex offender is released to their areas or when a federal sex offender is sentenced to probation. 18 U.S.C. § 4042(c). Federal sex offenders (including designated military offenders) are required to register in the states in which they reside, are employed, carry on a vocation, or go to school. See 42 U.S.C. § 14072 (i)(3), (i)(4), and 18 U.S.C. § 3563(a)(8), 3583(d), 4209(a) (registration as a condition of federal probation, supervised release, or parole).</td>
<td>The meaning of the phrase “has had civil rights restored” may have various meanings if practical effect from state to state depending on laws regarding loss and restoration of rights. Courts have generally held that the phrase refers to the basic rights of citizenship, such as the rights to vote, serve on a jury, and hold public office. The Supreme Court held that federal offenders remain subject to the federal firearms disability until their civil rights are restored through a federal, not a state, procedure. <em>Beecham v. United States</em>, 511 U.S. 368 (1994). Therefore, federal felons who have had their civil rights restored by a state law or procedure are still prohibited</td>
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<td>privileges</td>
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<td>Under the Gun Control Act of 1968, as amended, 18 U.S.C. § 921 - 930, a person convicted in any court of a “crime punishable by imprisonment for a term exceeding one year” may not ship or transport a firearm or ammunition in interstate or foreign commerce, possess a firearm or ammunition in or affecting commerce, or receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. 18 U.S.C. § 922(g)(1). The definition of firearm includes both long guns and handguns. 18 U.S.C. § 921(a)(3). This prohibition is inapplicable to certain federal and state offenses related to business practices, to certain state offenses classified as misdemeanors, and to “[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored . . . unless such pardon, expungement, or restoration of civil rights</td>
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<td>expressly provides that the person may not ship, transport, possess, or receive firearms.” 18 U.S.C. § 921(a)(20). The statute further provides that “[w]hat constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held.” Id. In addition, federal law prohibits gun possession by persons convicted in any court of a “misdemeanor crime of domestic violence.” 18 U.S.C. § 922(g)(9). A person is not considered to have been convicted of such an offense, however, “if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.” 18 U.S.C. § 921(a)(33)(B)(ii).</td>
<td>by federal laws from possessing firearms. There is no general federal statutory procedure for restoring civil rights to federal felons. Offenders whose conviction has been pardoned, expunged, or set aside or whose rights have been restored are still subject to the firearms prohibition if the “pardon, expungement, or restoration of civil rights expressl provides that the person may not ship, transport, possess, or receive firearms.” 18 U.S.C. §§ 921(a)(20), (a)(33). State offenders seeking to rely on a state restoration statute to meet the exception to the federal firearms disability may be caught by the proviso because, despite the restoration of various rights, their state firearms privileges are still restricted.</td>
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