



June 16, 2017

U.S. Commission on Civil Rights
1331 Pennsylvania Ave., NW, Suite 1150
Washington, DC 20425

RE: Requests for Comments: Collateral Consequences

Dear U.S. Commission on Civil Rights,

Thank you for the opportunity to provide supplemental information on collateral consequences of criminal records and incarceration. These comments come from the Justice Team at the Center for Law and Social Policy (CLASP). CLASP is a national, nonpartisan, anti-poverty nonprofit advancing policy solutions for low-income people. Working at the federal, state, and local levels, we develop practical yet visionary strategies for reducing poverty, promoting economic security, and addressing barriers faced by low-income communities and communities of color. Over the past few years, CLASP has been building our justice portfolio with a focus on the experiences of low-income youth and young adults of color, as well as the importance of education and training in reconnecting incarcerated adults. CLASP recognizes the detrimental effects that collateral consequences can have on the formerly incarcerated and their families, and we thank you for shedding light on this issue.

Across the country, diverse states are looking at the issue of criminal justice reform and the challenges of collateral consequences as a barrier to reintegration into society by individuals with previous convictions. We urge you to think of collateral consequences not just with respect to the laws that affect formerly incarcerated individuals' daily lives but also the psychological impact of incarceration on these individuals and their families. By viewing collateral consequences of incarceration to individuals, families, and communities through a two-generation frame, you would offer a unique contribution to both the criminal justice reform and two-generation fields.

We are encouraged that there has already been some attention to such policy issues as the barring of formerly incarcerated individuals from critical public benefits and public housing, and the ways in which felony convictions lock people out of job and educational opportunities and full participation in civic life—such as voting (in many states)—all of which have consequences for the entire family. Beyond these areas, CLASP is seeking to broaden the policy conversation on collateral consequences to include the effects of having an incarcerated parent or sibling on child and adolescent development, and the threat posed to immigrant families by the link between disproportionate contact with the criminal justice system and deportation risk.

Access to Employment

Each year, nearly 650,000 people are released from jails and prisons, and over 70 percent of them are nonviolent offenders.¹ Nonetheless, they face nearly insurmountable barriers to sustainable employment, housing, and health care.² Research indicates that between 60 and 75 percent of people who are formerly incarcerated face persistent unemployment up to a year after their release.³ This is due, in part, to the discrimination they face when reentering the workforce. Many members of this population lack education and training, which initially made them susceptible to entering the criminal justice system.⁴ Upon release, the gaps in their work history, and having a criminal record leave them in an even worse condition. Unfortunately, incarcerated individuals are offered limited opportunities to gain education and training in the prison system. And, once released, they are often barred from attaining employment in the field in which they were trained since many licensing boards won't license people with a criminal record. There are 27,254 recorded licensing penalties against people with criminal records, and many employers are hesitant to hire people with a record.⁵ When formerly incarcerated individuals are able to find work, it is typically in low-wage jobs, which hinders them from being able to adequately provide for their families.⁶ Consequently, these perpetual punishments contribute to recidivism as over two-thirds of released prisoners are rearrested within three years.⁷

Access to Postsecondary Education and Training

We believe that society's goal should be to reintegrate formerly incarcerated individuals back into their communities after serving their sentences. Interactions with the justice system have disconcerting implications for postsecondary education access and employment eligibility, which are directly tied to economic mobility. Depending on the crime and age of the person when the offense occurred, a criminal conviction can bar access to state and federal financial aid, college, and job opportunities.⁸ Given the disproportionate rate of incarceration among low-income, low-skilled African American and Latino men, the pipeline to incarceration is inevitably a pipeline to inescapable poverty and high rates of recidivism in many cases.⁹ When accessible and effectively implemented, correctional education can help change this negative cycle, but the damage of overbearing collateral consequences and disconnected pathways from training received in prison to continued opportunities after release result in counterproductive outcomes.¹⁰

Access to Income and Work Supports and Housing

Food and housing are basic necessities that everyone needs to survive. Unfortunately, formerly incarcerated individuals are often barred from the resources they need to access those necessities. Both public housing projects and private landlord often have policies against renting to people with criminal records.¹¹ Additionally, SNAP (Supplemental Nutrition Assistance Program) food assistance, TANF (Temporary Assistance for Needy Families), and/or public housing, which are crucial support programs, have policies that prevent the formerly incarcerated from receiving assistance, depending on their offense; this is particularly common for drug offenses.¹² SNAP, TANF, and housing assistance increase stability for economically vulnerable people and can provide them with the tools they need to reintegrate back into society.

Excluding people from these programs impedes them from reestablishing themselves in their communities and is harmful to them and their families.

One way to ensure that formerly incarcerated individuals have the resources they need upon release is through pre-enrollment in safety net programs. Pre-enrollment in Medicaid is especially important. Formerly incarcerated individuals are more likely to have chronic physical and mental conditions than those who haven't experienced incarceration, which makes gaps in coverage particularly detrimental to their wellbeing.¹³ Currently, states have the flexibility to suspend, rather than terminate, an individual's Medicaid coverage while incarcerated, which is a practical way of ensuring that people have access to Medicaid upon release. However, too few states have adopted these policies and implemented them systematically. In addition, some states suspend or close a case when someone who is receiving benefits is incarcerated, cutting off benefits for children or other family members as well.

While it is less common to pre-enroll individuals leaving incarceration into SNAP, it can be particularly helpful. Having SNAP applications approved prior to release means these people can also immediately participate in a job training program (SNAP Employment and Training) if offered in their county. Research indicates that formerly incarcerated individuals who are quickly engaged with employment and training services have lower recidivism rates than those who have delayed participation in such programs. Providing pre-enrollment helps improve outcomes for this population and also improves public safety by increasing chances of employment and financial stability and reducing risks of reoffending. Effective criminal justice reform would guarantee that formerly incarcerated individuals have access to these supports; efficient reform would incorporate access prior to release.

Immigration

Immigrants who become involved in the criminal justice system face particularly dire long-term consequences, including deportation and permanent separation from their families. In recent years the number of lawful permanent residents and unauthorized immigrants who have been deported—often for very minor drug offenses—has significantly increased, even despite efforts across the country to legalize certain substances and to reduce sentencing for certain drug-related offenses.¹⁴ This increase reflects current immigration laws that create disproportionately extreme consequences for noncitizens as well as an increase in immigration enforcement under the Trump Administration's new immigration executive orders, including increased collaboration with local police to detain unauthorized immigrants.¹⁵ Research consistently shows that aggressive immigration enforcement policies at the federal and state level, particularly when local police are involved, leads to an increase in racial profiling and a chilling effect among immigrant communities, resulting in more immigrants of color being targeted and placed on a path to deportation. Immigrants who are involved in the criminal justice system—including those who may have come to the United States at a very young age—often face deportation to a country where they no longer have ties and may be barred from ever reuniting with family in the United States, creating significant hardship for children and other family members left behind. To minimize the collateral consequences of incarceration on immigrants, laws and policies regarding deportable offenses, mandatory detention, and immigration enforcement must be

reformed to reduce the disproportionate punishment and unnecessary harm to immigrants and their families.

Youth

Many youth involved in the justice system have been exposed to high levels of toxic stress—resulting from extreme poverty, neglect, abuse, or witnessing violence—that can interrupt their normal brain development with long-term consequences for learning, behavior, and physical and mental health. The negative effects of these experiences often endure into adulthood. Conditions in detention centers and juvenile justice facilities, including violence and use of seclusion and restraint, can exacerbate existing mental health issues. The trauma brought on by these adverse childhood experiences necessitates that justice-involved youth in community settings be connected to high-quality, culturally competent health care and mental health interventions.

Youth of color are more likely to suffer from harsh school discipline policies and have contact with law enforcement that leads to overrepresentation in the juvenile and criminal justice system compared to their White peers. Incarceration follows individuals long after the sentence is over. These barriers form a vicious cycle in which the lack of quality and accessible education, employment, and youth development opportunities can contribute to over attachment to the juvenile and criminal justice system; and these very same supports that can help young people to get back on track, are in many instances denied because of that contact with the justice system.

Children and Families

Collateral consequences have a particularly harmful impact on children. Separation of parents from their children due to parental incarceration, and the resulting family stress, threatens children's wellbeing, and directly contributes to negative developmental impacts on young children. The collateral consequence of parental incarceration directly impacts parents' abilities to support their children's needs.¹⁶ Children of incarcerated parents are more likely to be exposed to parental substance abuse, parental mental illness, and harsh parenting practices compared to their peers who don't have a parent in prison.¹⁷ A critical part of healthy development and future learning is consistent and warm relationships between children and their parents during infant and toddler years.¹⁸ Parental incarceration is associated with childhood illness, behavioral problems, poor educational outcomes and a greater likelihood of poor physical and mental health in adulthood.¹⁹ A study of children whose mothers were incarcerated indicated that compared to any other age group, parental incarceration had the greatest impact on children ages 2-6.²⁰ Experiences during the early childhood years affect brain development and ultimately a child's cognitive, linguistic, social, and emotional abilities. The collateral consequences of parental incarceration can disproportionately affect very young children, and the effects can be profound and long-lasting. The short and long-term impacts of parental incarceration on children's wellbeing and long-term development should be a critical concern in shaping related policies.

Thank you for your consideration. Links to CLASP resources on many of these issues are provided at the end of this document. We would be happy to discuss them, along with any of these issues with you in more depth. For any questions or for more information, please contact Victoria Palacio (vpalacio@clasp.org).

Additional Resources:

In October 2016, CLASP hosted a public forum, [Reconnecting Justice: Pathways to Effective Reentry through Correctional Education and Training](#). The forum featured expert discussions connecting policy trends in correctional education and training with reentry opportunities that promote economic justice.

CLASP released a report, [From Incarceration to Reentry: Pathways to Effective Reentry through Correctional Education and Training](#), examining the funding and programming landscape of correctional education and training, along with the implications for continued opportunities through reentry.

CLASP's report, [Reconnecting Justice: Lessons Learned and the Agenda Ahead](#), lifts up the strong connections between education, jobs, and criminal justice. The report outlines our agenda for moving forward in the current political climate, where uncertainty surrounds criminal justice reform.

A CLASP [blog post highlighting the results of the PIAAC Survey of Incarcerated Adults](#), discusses the racial and economic disparities of incarceration showing how collateral consequences primarily affect disadvantaged communities.

CLASP statements in support of the [SUCCESS Act](#), [Fair Chance Higher Education Pledge](#), and [Second Chance Pell Experimental Sites](#)

CLASP recently updated a brief, [No More Double Punishments](#), which discusses the detrimental impacts of banning people with felony convictions from accessing SNAP and TANF. This brief highlights states that have made progress in eliminating these bans, and provides an overview of each state's policies.

In April 2017, CLASP released a brief, [Five Reasons Trump's Immigration Orders Harm Children](#), that discussed how President Trump's executive orders on immigration would drastically expand the intensity and scope of federal immigration enforcement activities, which intersects with the criminal justice system. These orders include policy changes that will have damaging consequences for children living in mixed-status immigrant families.

The American justice system has been deliberately structured to marginalize low-income communities and communities of color. Historically and currently, this leads to mass incarceration and has devastating collateral consequences. Any attempt to create just, equitable policy for low-income youth of color must acknowledge this context. CLASP outlines principles to address these issues in, [Realizing Youth Justice: Guiding Principles for Advocates in the Trump Era](#).

CLASP proposes policy strategies that envision work and educational opportunities, along with health and mental health supports, as part of the formula needed to dismantle structural barriers that push youth of color into detention and incarceration, in this brief, [Realizing Youth Justice: Advancing Education and Employment through Public Policy and Investment](#).

¹ Matthew Durose, Alexia Cooper, and Howard N. Snyder *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, U.S. Department of Justice, 2014, <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

² “FACT SHEET: During National Reentry Week, Reducing Barriers to Reentry and Employment for Formerly Incarcerated Individuals,” U.S. Department of Justice, April 29, 2016, <https://www.justice.gov/opa/pr/fact-sheet-during-national-reentry-week-reducing-barriers-reentry-and-employment-formerly>.

³ *Reentry and Employment for the Formerly Incarcerated and the Role of American Trades Unions*, NELP, ITPI, 2016, <http://www.nelp.org/publication/reentry-and-employment-for-the-formerly-incarcerated-and-the-role-of-american-trades-unions/>.

⁴ Duy Pham, and Wayne Taliaferro, *Reconnecting Justice, Lessons Learned and the Agenda Ahead*, CLASP, 2017, <http://www.clasp.org/resources-and-publications/publication-1/Reconnecting-Justice-Lessons-Learned-and-the-Agenda-Ahead.pdf>.

⁵ Michelle Natividad Rodriguez, and Beth Avery, *Unlicensed and Untapped: Removing Barriers to State Occupational Licenses for people with Records*, NELP, 2016, <http://nelp.org/content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.

⁶ *Reentry and Employment for the Formerly Incarcerated and the Role of American Trades Unions*, NELP, ITPI, 2016, <http://www.nelp.org/publication/reentry-and-employment-for-the-formerly-incarcerated-and-the-role-of-american-trades-unions/>.

⁷ NIJ website, <http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx>.

⁸ *Beyond the Box: Increasing Access to Higher Education for Justice-Involved Individuals*, U.S. Department of Education, 2016, <https://www2.ed.gov/documents/beyond-the-box/guidance.pdf>.

⁹ Wayne Taliaferro, Duy Pham, and Anna Cielinski, *From Incarceration to Reentry, A Look at Trends, Gaps, and Opportunities in Correctional Education and Training*, CLASP, 2016, http://www.clasp.org/resources-and-publications/publication-1/2016.10.27_fromincarcerationtoreentry.pdf.

¹⁰ Taliaferro et al., *From Incarceration to Reentry, A Look at Trends, Gaps, and Opportunities in Correctional Education and Training*

¹¹ Rebecca Burns, “No Second Chances When It Comes to Housing,” *Truthout*, March 15, 2015, <http://www.truth-out.org/news/item/29584-no-second-chances-when-it-comes-to-housing>.

¹² Lavanya Mohan, Victoria Palacio, and Elizabeth Lower-Basch, *No More Double Punishments, Lifting the Lifetime Ban on Basic Human Needs Help for People with a Prior Drug Felony Conviction*, CLASP, 2017, <http://www.clasp.org/resources-and-publications/publication-1/Safety-Net-Felony-Ban-FINAL.pdf>.

¹³ Catherine McKee, Sarah Somers, Samantha Artiga, et al., *State Medicaid Eligibility Policies for Individuals Moving Into and Out of Incarceration*, The Henry J. Kaiser Family Foundation, 2015 <http://files.kff.org/attachment/issue-brief-state-medicare-eligibility-policies-for-individuals-moving-into-and-out-of-incarceration>.

¹⁴ “US: Drug Deportations Tearing Families Apart Spike in Cases, Many for Minor Offenses” *Human Rights Watch*, June 16, 2015, <https://www.hrw.org/news/2015/06/16/us-drug-deportations-tearing-families-apart>.

¹⁵ Wendy Cervantes, and Christina Walker, *Five Reasons Trump’s Immigration Orders Harm Children*, CLASP, 2017, <http://www.clasp.org/resources-and-publications/publication-1/Five-Reasons-Immigration-Enforcement-Orders-Harm-Children.pdf>.

¹⁶ *Parents in Prison*, The Sentencing Project, 2012. <http://www.sentencingproject.org/publications/parents-in-prison/>

¹⁷ Neil Damron, *Poverty Fact Sheet: Life beyond bars children with an Incarcerated Parent*, Institute for Research and Poverty University of Wisconsin-Madison, 2014, <http://www.irlp.wisc.edu/publications/factsheets/pdfs/Factsheet7-Incarceration.pdf>.

¹⁸ Committee on Integrating the Science of Early Childhood Development, *From Neurons to Neighborhoods: The Science of Early Childhood Development*, National Research Council and Institute of Medicine, 2000.

¹⁹ David Murphey and P. Mae Cooper, *Parents Behind Bars*, Child Trends, 2015, http://www.courts.ca.gov/documents/BTB_23_4K_6.pdf

²⁰ Barbara J. Myers, Tina M. Smarsh, Kristine, Amlund-Hagen, and Suzanne Kennon, “Children of incarcerated mothers,” *Journal of Child and Family Studies* 8(1) (1999).