

# LEGAL MEMORANDUM

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## Collateral Consequences: Protecting Public Safety or Encouraging Recidivism?

John G. Malcolm and John-Michael Seibler

### Abstract

*Collateral consequences of criminal conviction are civil disabilities imposed by local, state, and federal lawmakers and sometimes by administrative bodies. They are distinct from the direct consequences of criminal convictions, such as a criminal record, fines, probation, and prison, and are often premised on the need to protect public safety once an offender is released. While some are certainly justifiable, collateral consequences that are applied indiscriminately, with a tenuous relationship between the restriction imposed and the offense committed, can make it more difficult for someone with a criminal record to reintegrate into society, thereby increasing the likelihood that an ex-offender will return to a life of crime and recidivate. Legislators should reassess existing collateral consequences to ensure that, rather than merely being imposed as an additional punishment, they truly make sense from a public safety standpoint. Legislators should also reinvent or create, if necessary, some procedural mechanism for ex-offenders to receive relief from unduly onerous collateral consequences in deserving cases.*

When most people think about the consequences of a criminal conviction, they imagine a court-ordered prison sentence or probation, which normally has a definite beginning and an end. Many probably think that when “prison bars and chains are removed,” punishment has come to an end, and reintegration into society as a law-abiding citizen can begin.<sup>1</sup> But that is far from true. In fact, more than 46,000 local, state, and federal civil laws and regulations—known as “collateral consequences” of conviction, as opposed to the “direct consequences” of conviction—restrict the

### KEY POINTS

- Collateral consequences impose civil disabilities on ex-offenders’ exercise of constitutional rights, their ability to participate in government entitlement programs or to practice certain professions.
- There are over 46,000 collateral consequences at the state and federal level, with 60%-70% related to employment, and tens of thousands more employment-related collateral consequences in local ordinances, which stifle opportunities for success.
- Collateral consequences may be unduly burdensome if drafted with little or no rational relationship between the restriction imposed and the offense committed, or on the basis of gross generalizations about offenders that may not be true.
- Some collateral consequences unnecessarily frustrate reintegration and increase the likelihood of recidivism.
- Legislators should reassess existing collateral consequences and the efficacy of relief mechanisms to ensure that they do not burden ex-offenders with arbitrary regulation that undermines efforts to achieve public safety and cost-effective criminal justice.

This paper, in its entirety, can be found at <http://report.heritage.org/lm200>

**The Heritage Foundation**  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 546-4400 | [heritage.org](http://heritage.org)

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activities of ex-offenders<sup>2</sup> and curtail their liberties after they are released from confinement or their period of probation ends.<sup>3</sup>

Many people convicted of crimes are never sent to prison, and of those who are, more than 95 percent—tens of millions of people<sup>4</sup>—will eventually be released and will return to our communities.<sup>5</sup> They face long odds when trying to put their past behind them. In addition to having to endure the stigma associated with being a convicted criminal, many ex-offenders have substance abuse issues, a limited education, and even more limited job skills and experience. Regrettably, many of these ex-offenders will end up committing additional offenses after their release, thereby posing a continuing threat to public safety.<sup>6</sup> Although many no doubt would have committed additional crimes regardless of any collateral consequences imposed upon them, a significant minority (if not a majority) would like to turn over a new leaf and become productive, self-reliant, law-abiding members of society, capable of supporting themselves and their families.

As the American Bar Association has pointed out, “If promulgated and administered indiscriminately, a regime of collateral consequences may frustrate the chance of successful re-entry into the community, and thereby encourage recidivism.”<sup>7</sup> It is not in anyone’s best interests to consign ex-offenders to a permanent second-class status. Doing so will only lead to wasted lives, ruined families, and more crime. Like the criminal conviction itself, civil sanctions carry real consequences that can be as injurious as they are “demoralizing.”<sup>8</sup> It is therefore time to rethink the collateral consequences that we impose on people with a criminal record when those consequences increase the likelihood that ex-offenders will fail in their efforts to reform.

Legislators have broad discretion to enact laws creating collateral consequences. Usually imposed under the guise of protecting public safety, these laws are considered remedial and not punitive. They can affect, among other things, an ex-offender’s ability to get a job or a professional license; to get a driver’s license;<sup>9</sup> to obtain housing,<sup>10</sup> student aid,<sup>11</sup> or other public benefits;<sup>12</sup> to vote, hold public office or serve on a jury;<sup>13</sup> to do volunteer work;<sup>14</sup> and to possess a firearm.

Public safety benefits significantly outweigh any burden that some collateral consequences place on an ex-offender’s ability to reintegrate into society.

For example, prohibiting convicted sex offenders from running a day care center or residing or loitering near elementary schools is a prudent way to protect children.<sup>15</sup> Prohibiting violent felons from purchasing or possessing firearms is another example.<sup>16</sup> Similarly, forcing a public official who has been convicted of bribery or public corruption to resign from office<sup>17</sup> or prohibiting someone convicted of defrauding a federal program from participating in a related industry for a period of time impose collateral consequences directly related to the substance of the offense.<sup>18</sup> Others, such as restrictions on voting, may make sense for some period of time but perhaps not indefinitely.<sup>19</sup>

Some collateral consequences, though, have a tenuous connection to public safety, appear to be more punitive in nature, and certainly make it more difficult for an ex-offender to reintegrate into society.<sup>20</sup> State and federal legislators should periodically review existing collateral consequences to ensure that they are necessary to protect public safety, not punitive in nature, and reasonably related to the offense that was committed. Collateral consequences that do not fit these parameters should be amended or repealed<sup>21</sup> so that ex-offenders who are earnestly working to lead lawful, prosperous lives are not needlessly thrown off-course.

## History and Nature of Collateral Consequences

Just as we can thank the ancient Greeks for democracy, we can also thank them for the ancient doctrine of “infamy,” which revoked the rights of individuals convicted of a criminal offense to vote, hold public office, and otherwise participate in democracy.<sup>22</sup> Those restrictions were designed not to punish offenders, but to insulate state affairs from people who had demonstrated a criminal temperament.<sup>23</sup> Collateral consequences for those convicted of a crime increased both in number and in severity through the Middle Ages and the Enlightenment, by which time convicted criminals commonly were exiled.<sup>24</sup>

At early common law, so many collateral consequences were piled upon offenders that the “infamy” of old earned a new name: “civil death.”<sup>25</sup> This referred to the status of having all of an individual’s civil rights, including those related to contract and property, extinguished upon conviction of a capital crime.<sup>26</sup> Regarding a convicted felon “as dead in law”<sup>27</sup> provided “a practical way of settling [his]

earthly affairs” between the time of his conviction and his execution.<sup>28</sup>

America inherited this legal and social history that treated a criminal conviction as conferring “a status upon a person which not only makes him vulnerable” to existing and new collateral consequences, “but which also seriously affects his reputation and economic opportunities.”<sup>29</sup> The colonies retained many aspects of “civil death.” Over time, however, lawmakers either discarded or codified collateral consequences of criminal convictions in state statutes,<sup>30</sup> and some aspects persist to this day in a few states.<sup>31</sup> But as capital punishment for felonies decreased and concern for proportional criminal sentences increased, many of the most severe repercussions, including those related to contract, property, marriage, and the right to sue, were repealed throughout the 20th century.<sup>32</sup> In 1984, a House committee report proclaimed a “consensus that arbitrary restrictions on the rights of former offenders should be eliminated.”<sup>33</sup> Since the 1980s, however, collateral consequences have returned with a vengeance, steadily increasing in scope and number at the local, state, and federal levels.<sup>34</sup>

As is the case with criminal laws generally, the Constitution authorizes legislatures, not courts or prosecutors, “to weigh the propriety of” reasonable policy alternatives and choose among them in enacting laws.<sup>35</sup> While it appears that the Supreme Court of the United States has rejected virtually every constitutional challenge to collateral consequences,<sup>36</sup> there remains a general expectation by the public that legislators will not pass laws imposing collateral consequences that are arbitrary, unreasonable, and unduly onerous, and such criticisms of collateral consequences are appropriately directed at legislatures.

### **Collateral Consequences Today**

Collateral consequences are civil in nature and thus distinct from criminal laws and penalties, so courts, prosecutors, and defense attorneys have generally treated them as falling outside the scope of their control and immediate concern.<sup>37</sup> Few are aware of the full scope of these “post-sentence civil penalties, disqualifications, or disabilities” that follow a conviction,<sup>38</sup> including criminal defendants and defense counsel.<sup>39</sup> They should be.

At least two things distinguish the current morass of collateral consequences from those enforced in ancient Greece.

*First*, the number of collateral consequences and the number of people to whom they apply are far greater than the Athenians would likely have imagined.<sup>40</sup> Researchers for the American Bar Association counted as many as 46,000 collateral consequences scattered throughout state and federal codes, with thousands more at the local level.<sup>41</sup> Texas, for example, has over 200 collateral consequences in 22 different sections of the state code.<sup>42</sup> Many other states have also enacted unknown numbers of collateral consequences that are “scattered—one might say hidden—in disparate areas of their codes and regulations.”<sup>43</sup>

And, of course, the number of people convicted of a crime has risen dramatically since the 1970s and, with that, the number of people living with the collateral consequences of their crimes, many of which make it harder for ex-offenders to reintegrate into society as law-abiding citizens.

*Second*, not all collateral consequences appear to be reasonably related to the offense(s) committed. For example, Ohio law provides for the suspension or revocation of an offender’s driver’s license upon conviction of some crimes that are entirely unrelated to driving.<sup>44</sup> Why restrict an ex-offender’s ability to get or drive to a job or to pick up his or her children from school if that individual poses no greater risk to people on the road than any other driver?

Similar problems can arise with respect to another category of collateral consequences: those that revoke receipt of or eligibility for certain government benefits.

- A criminal conviction may cost a military veteran his or her pension, insurance, and right to medical treatment,<sup>45</sup> which is particularly troubling because studies indicate that veterans who are suffering from post-traumatic stress disorder and therefore in serious need of medical treatment may be more likely to commit crimes.<sup>46</sup>
- In the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Congress barred individuals convicted of state or federal drug offenses from receiving, in addition to student aid, federal cash assistance under the Temporary Assistance for Needy Families (TANF) program and food stamps under the Supplemental Nutrition Assistance Program (SNAP).<sup>47</sup>

- States may also categorically bar certain types of offenders, such as all drug<sup>48</sup> and sex offenders,<sup>49</sup> from government housing for any period of time and can suspend or revoke a driver's license on the basis of a conviction, to name only a few such restrictions.<sup>50</sup>

While these restrictions may make sense for some ex-offenders, depriving broad swathes of ex-offenders of the ability to get assistance for themselves and their families, to live in affordable housing in a stable environment, or to obtain educational assistance to enhance their skills is hardly conducive to helping them become productive citizens.

Perhaps the most ubiquitous and pernicious collateral consequences imposed on ex-offenders are restrictions on their ability to earn a livelihood.<sup>51</sup> Some restrictions, of course, make sense. For example, federal law bars individuals with a prior criminal conviction from holding elected office and, depending on the nature of the conviction, from working for the military<sup>52</sup> or in law enforcement,<sup>53</sup> private security,<sup>54</sup> and jobs that require a security clearance.<sup>55</sup> It is less clear whether the same ban should apply for professions that require a federal license, including grain inspector, locomotive engineer, and merchant mariner.<sup>56</sup>

State laws restricting employment opportunities for ex-offenders can be even more severe. For example:

- Virginia has enacted over 140 mandatory collateral consequences that affect employment, from disqualification to hold any state “office of honor, profit, or trust” to ineligibility to hold a commission as a notary public,<sup>57</sup> and
- Ohio imposes more than 500 mandatory collateral consequences that restrict employment opportunities including employment as a contractor or truck driver.<sup>58</sup>

Of the 46,000 collateral consequences identified by the American Bar Association, 60 percent to 70 percent were employment-related.<sup>59</sup> Experts estimate that there are thousands of similar restrictions in local ordinances.<sup>60</sup> These can bar ex-offenders from pursuing various occupations such as street peddling, cab driving, and construction.<sup>61</sup> And the federal, state, and local governments are free to pile

on “at any time” whatever “additional restrictions and limitations they deem warranted.”<sup>62</sup>

A multitude of other occupational licensing laws compounds the effect of collateral consequences insofar as they “may either explicitly exclude individuals convicted of certain criminal convictions or implicitly exclude them through a requirement that applicants be of ‘good moral character.’”<sup>63</sup> These include operating a dance hall, bar, pool hall, bowling alley, or movie theatre<sup>64</sup> and working as a midwife, an interior designer, or a barber. The list goes on,<sup>65</sup> each law magnifying the effect of the one before it.<sup>66</sup> Even creative politicians would be hard-pressed to come up with a legitimate public safety rationale for prohibiting an ex-offender from serving as a midwife, an interior designer, or a barber. This is particularly absurd when one considers that many ex-offenders receive training to become barbers while incarcerated,<sup>67</sup> only to discover that they cannot get a license to practice in the one field in which they now have a marketable skill.<sup>68</sup> Research shows that states with heavy occupational licensing burdens and restrictions for ex-offenders have seen higher average levels of recidivism for new criminal offenses than have states with fewer occupational licensing burdens and restrictions.<sup>69</sup>

Studies have also shown a positive correlation between collateral consequences and lower employment rates as well as higher recidivism rates.<sup>70</sup> Although more research is needed, existing research strongly suggests that imposing irrational restrictions on economic opportunities for ex-offenders undermines efforts to promote public safety and a cost-effective criminal justice system.<sup>71</sup>

## What State and Federal Legislators Can Do

Under certain circumstances, Presidents and governors can issue pardons and restore an individual's civil rights, and courts can expunge criminal records or issue certificates of rehabilitation,<sup>72</sup> thereby providing some deserving ex-offenders with some relief from the burdens otherwise imposed by collateral consequences. Employers may also help to improve ex-offenders' employment prospects by voluntarily delaying their inquiry into a job applicant's prior criminal record until later in the hiring process—a practice commonly referred to as a “ban the box” policy.<sup>73</sup> There also are several things that state and federal legislators can do to address unduly onerous collateral consequences.

- Legislators should review and consolidate all existing collateral consequences in a single location in order to make them more accessible so that the public is aware of the full consequences of criminal conviction.<sup>74</sup>
- Legislators should reassess the collateral consequences enacted within their jurisdictions to ensure that they are necessary to protect the public, reasonably related to the offense committed, and not capable of being enforced indiscriminately or arbitrarily. Any restriction that does not satisfy these parameters should be amended or repealed.<sup>75</sup>
- Legislators might also consider establishing more robust procedures for ex-offenders to petition for relief or waivers from certain collateral consequences, which could be granted in meritorious cases.

## Conclusion

In light of growing evidence that a number of collateral consequences may frustrate reintegration into the community and encourage recidivism, some states have already begun to reassess what collateral consequences should attach to which convictions, as well as why and for how long.<sup>76</sup> While some collateral consequences are justifiable as a way to protect public safety, many are not. Unjustifiable collateral consequences appear to be punitive in nature, designed to continue punishing ex-offenders once they complete their sentences for the crimes they committed. The public's desire to continue to stigmatize an ex-offender may be understandable, but it comes at a high cost.

Since most ex-offenders—millions of them—at some point will be released from custody and return to our communities, it is important that we do everything we can to encourage them to become productive, law-abiding members of society and that we not put too many impediments, in the form of excessive collateral consequences, in their way that will hinder their efforts. More attention must be paid to this issue to avoid these dangerous and counterproductive results.

—*John G. Malcolm is Director of and Ed Gilbertson and Sherry Lindberg Gilbertson Senior Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies, of the Institute for Constitutional Government, at The Heritage Foundation. John-Michael Seibler is a Legal Fellow in the Meese Center.*



## Endnotes

1. *Weems v. United States*, 217 U.S. 349, 366 (1910) (“His prison bars and chains are removed, it is true...but he goes from them to a perpetual limitation of his liberty...subject to tormenting regulations that, if not so tangible as iron bars and stone walls, oppress as much by their continuity, and deprive of essential liberty.”).
2. The term “ex-offender” as used in this *Legal Memorandum* refers to a person with a prior criminal conviction.
3. See *Weems*, 217 U.S. at 366; Joe Palazzolo, *5 Things to Know About Collateral Consequences*, WALL ST. J. (May 17, 2015), <http://blogs.wsj.com/briefly/2015/05/17/5-things-things-to-know-about-collateral-consequences/>.
4. Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U. L. REV. 623, 628 (2006) (estimating that roughly 65,000 individuals are released from prison and 9 million individuals are released from local jails each year).
5. “At least 95% of all state prisoners will be released from prison at some point; nearly 80% will be released to parole supervision.” TIMOTHY HUGHES & DORIS JAMES WILSON, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, REENTRY TRENDS IN THE UNITED STATES, <https://www.bjs.gov/content/reentry/reentry.cfm> (last visited Dec.19, 2016). “Virtually all offenders convicted of a federal crime are released from prison eventually and return to society or, in the case of illegal aliens, are deported to their country of origin.” GLENN R. SCHMITT & HYUN J. KONFRST, U.S. SENTENCING COMM., LIFE SENTENCES IN THE FEDERAL SYSTEM 1 (2015), [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226\\_Life\\_Sentences.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf) (noting that in 2013, all offenders who received a life sentence without parole or who effectively received a life sentence due to their age and sentence duration made up only 0.4 percent of all federal criminal sentences); see also PEW CHARITABLE TRUSTS, *Prison Time Surges for Federal Inmates* (Nov. 18, 2015), [http://www.pewtrusts.org/-/media/assets/2015/11/prison\\_time\\_surges\\_for\\_federal\\_inmates.pdf](http://www.pewtrusts.org/-/media/assets/2015/11/prison_time_surges_for_federal_inmates.pdf) (“With the exception of the comparatively small number of offenders who are sentenced to death or life behind bars or who die while incarcerated, all inmates in federal prisons will eventually be released.”).
6. KIM STEVEN HUNT & ROBERT DUMVILLE, U.S. SENTENCING COMM., RECIDIVISM AMONG FEDERAL OFFENDERS: A COMPREHENSIVE OVERVIEW (Mar. 2016), [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism\\_overview.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf) (studying 25,431 federal offenders released from prison or commencing a term of probation in 2005; 49.3 percent were rearrested within eight years for a new crime or for one or more technical violations of the supervised release conditions, the median time to rearrest was 21 months, 31.7 percent were reconvicted, and 24.6 percent were reincarcerated). In 2014, 76.6 percent of offenders released from state prison were rearrested within five years, 55.4 percent were convicted, and 28.2 percent were reincarcerated. MATTHEW DUROSE ET AL., BUREAU OF JUSTICE STATISTICS, DEP’T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 (2014), <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>. A comparison of the two studies reveals that a quarter (25.7 percent) of released state inmates had a violent commitment offense compared to only 6.8 percent of inmates released from federal prison. State offenders were more likely to be under 40 years of age (68.5 percent) and male (89.3 percent) than the federal offenders (60.1 percent under age 40 and 85.9 percent male). The BJS study also included non-U.S. citizens, a category of offender excluded from the Sentencing Commission’s study.
7. See ABA, STANDARDS FOR CRIMINAL JUSTICE, COLLATERAL SANCTION AND DISCRETIONARY DISQUALIFICATIONS OF CONVICTED PERSONS, 10 (3d ed. 2004) (referencing compilations of various states’ collateral consequences for comparison) (hereinafter ABA Standards).
8. Kenneth L. Karst, *The Supreme Court 1976 Term, Foreword: Equal Citizenship Under the Fourteenth Amendment*, 91 HARV. L. REV. 1, 6–7 (1998).
9. 23 U.S.C. § 159 (2000) (revocation or suspension of drivers’ licenses of individuals convicted of drug offenses); see also, e.g., FLA. STAT. § 322.055(2) (same).
10. Rebecca Beitsch, *States Rethink Restrictions on Food Stamps, Welfare for Drug Felons*, PEW CHARITABLE TRUSTS (July 30, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/07/30/states-rethink-restrictions-on-food-stamps-welfare-for-drug-felons>.
11. See, e.g., 20 U.S.C. § 1091(r) (prohibiting students convicted of drug offenses while receiving student aid from receiving such aid for a period of years after conviction).
12. See, e.g., 13 C.F.R. § 123.101(i) (prohibiting someone who is “presently incarcerated, or on probation or parole following conviction for a serious criminal offense,” from receiving a federal home disaster loan); 13 C.F.R. § 124.108(a)(4)(ii) (prohibiting someone who is “currently incarcerated, or on parole or probation pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity,” from being eligible to participate in the U.S. Small Business Administration’s 8(a) Business Development Program); see also Beitsch, *supra* note 10.
13. See Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 AM. U. L. REV. 65, 73–74 (2003); see also, e.g., CAL. CIV. CODE § 203(a)(5) (prohibiting persons in California “who have been convicted of malfeasance in office or a felony” from serving on a jury unless their rights have been restored).
14. See, e.g., AM. BAR ASSOC. COMM. ON EFFECTIVE CRIM. SANCTIONS & PUB. DEF. SERV. D.C., INTERNAL EXILE: COLLATERAL CONSEQUENCES OF CONVICTION IN FEDERAL LAWS AND REGULATIONS 18, 31 (2009), available at <http://bit.ly/2iTXKJ> (noting laws that bar certain offenders from volunteer work that involves the presence of a minor); KIM AMBROSE, WA. DEFENDER ASSOC., BEYOND THE CONVICTION, 12–13 (2013), <http://bit.ly/2iFaANT> (same); James Frank et al., *Collateral Consequences of Criminal Conviction in Ohio* 31 U. CIN. CTR. CRIM. JUST. RESEARCH, report to the Ohio Office of Criminal Justice Services), available at <http://ocjs.ohio.gov/CollateralConsequences.pdf> (Ohio law provides that “[a]ny person who has been convicted of a disqualifying offense is incompetent to hold a public office, to be publicly employed, or even to be a volunteer in certain public positions, such as volunteer firefighter.”).

15. See, e.g., NAT'L CONF. OF STATE LEGISLATURES, *Enactments Concerning Sex Offenders Near Schools and Child-Care* (Sept. 19, 2006), available at [http://www.npr.org/programs/morning/features/2006/oct/prop83/ncsl\\_schools.pdf](http://www.npr.org/programs/morning/features/2006/oct/prop83/ncsl_schools.pdf); N.H. REV. STAT. ANN. § 170-E:29(III) (2013) (restricting activity of those convicted of “a violent or sexually-related crime against a child”); see also Ian Lovett, *Public-Place Laws Tighten Rein on Sex Offenders*, N.Y. TIMES (May 29, 2012), [http://www.nytimes.com/2012/05/30/us/sex-offenders-face-growing-restrictions-on-public-places.html?\\_r=0](http://www.nytimes.com/2012/05/30/us/sex-offenders-face-growing-restrictions-on-public-places.html?_r=0); ROGER PRZYBYLSKI, OFFICE OF JUSTICE PROGRAMS, DEP'T OF JUSTICE, RECIDIVISM OF ADULT SEX OFFENDERS (July 2015), available at <https://www.smart.gov/pdfs/RecidivismofAdultSexualOffenders.pdf> (discussing high recidivism rates for new sex crimes by adult sex offenders). Some have argued, however, that some restrictions and registration requirements for sex offenders may have gone too far and may end up doing more harm than good. See Jill Levinson & Andrew J. Harris, *SORNA: Good Intentions, Flawed Policy, and Proposed Reforms*, FED. SOC., ENGAGE, VOL. 13:3 (Oct. 2012), available at <http://www.fed-soc.org/publications/detail/an-exchange-over-the-sex-offender-registration-and-notification-act-sorna>.
16. See 18 U.S.C. § 922(g)(1); *District of Columbia v. Heller*, 554 U.S. 570, 626–627 (2008) (“Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons...”). *But see* U.S. v. Barton, 633 F.3d 168, 173 (3d Cir. 2011) (“*Heller's* statement regarding the presumptive validity of felon gun dispossession statutes...does not foreclose” parties with a criminal conviction from bringing an as-applied challenge.); COLLATERAL CONSEQUENCES RESOURCE CENTER, *Second Amendment Challenges to Felon-in-possession Laws* (Dec. 13, 2014), <http://ccresourcecenter.org/2014/12/13/second-amendment-challenges-felony-dispossession-laws/>. Some have urged, however, that individuals convicted of nonviolent offenses should be able to petition to have their Second Amendment rights restored. See, e.g., Paul Bedard, *House Votes to Let Nonviolent Ex-felons Restore Gun Rights*, WASH. EXAMINER (June 5, 2015), <http://www.washingtonexaminer.com/house-votes-to-let-nonviolent-ex-felons-restore-gun-rights/article/2565685>; James King, *This Ex-con is Trying to Get Guns in the Hands of Non-violent Felons*, THE WEEK (Mar. 2016), <http://theweek.com/articles/614883/excon-trying-guns-hands-nonviolent-felons>.
17. See, e.g., NAT'L CONF. OF STATE LEGISLATURES, *Penalties for Violations of State Ethics and Public Corruption Laws* (Feb. 2, 2015), <http://www.ncsl.org/research/ethics/50-state-chart-criminal-penalties-for-public-corr.aspx>.
18. See, e.g., 12 U.S.C. § 1829 (2000) (prohibiting persons convicted of crimes of dishonesty or breach of trust from owning, controlling, or otherwise participating in the affairs of a federally insured banking institution, subject to waiver by the FDIC; waiver may not be given for 10 years following conviction in the case of certain offenses involving the banking and financial industry); 10 U.S.C. § 2408 (2000) (persons convicted of fraud or felony arising out of defense contract prohibited from working in any capacity for a defense contractor or subcontractor for a period of at least five years); see also *DiCola v. Food & Drug Admin.*, 77 F.3d 504, 507 (D.C. Cir. 1996) (upholding the Food and Drug Administration's lifetime ban of a former drug company executive from “providing services in any capacity to the pharmaceutical industry” after conviction of adulterating a drug product and failing to keep adequate records; “The permanence of the debarment can be understood, without reference to punitive intent, as reflecting a congressional judgment that the integrity of the drug industry, and with it public confidence in that industry, will suffer if those who manufacture drugs use the services of someone who has committed a felony subversive of FDA regulation.”).
19. Some have argued that it is perfectly reasonable to deny the right to vote to convicted felons. See Hans A. von Spakovsky & Roger Clegg, *Felon Voting and Unconstitutional Congressional Overreach*, HERITAGE FOUNDATION LEGAL MEMORANDUM NO. 145 (Feb. 11, 2015), available at <http://www.heritage.org/research/reports/2015/02/felon-voting-and-unconstitutional-congressional-overreach> (“Those who are not willing to follow the law cannot claim a right to make the law for everyone else. And when an individual votes, he or she is indeed either making the law—either directly in a ballot initiative or referendum or indirectly by choosing lawmakers—or deciding who will enforce the law by choosing local prosecutors, sheriffs, and judges.”). Others, such as the NAACP, have argued that convicted felons should not lose their right to vote. See NAACP, *Felon Disenfranchisement Is About Race*, THE ROOT (Oct. 2, 2012), [http://www.theroot.com/articles/politics/2012/10/felon\\_disenfranchisement\\_naACP\\_launches\\_campaign/](http://www.theroot.com/articles/politics/2012/10/felon_disenfranchisement_naACP_launches_campaign/); see also *Developments in the Law—One Person, No Vote: The Laws of Felon Disenfranchisement*, 115 HARV. L. REV. 1939 (2002) (criticizing felony disenfranchisement laws). State laws vary considerably on this issue, with 48 states and the District of Columbia imposing at least some restrictions on felon voting. See NAT'L CONF. OF STATE LEGISLATURES, *FELON VOTING RIGHTS* (2016), available at <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx/>. In *Richardson v. Ramirez*, 418 U.S. 24 (1974), the Supreme Court upheld the constitutionality of California's felony disenfranchisement law. The essential issue appears to remain, as Associate Supreme Court Justice Clarence Thomas put it: Is the ex-offender “worthy of participating in civic life”? *Caron v. United States*, 524 U.S. 308, 318 (1998) (Thomas, J., dissenting).
20. See Tracy Sohoni, *The Effects of Collateral Consequence Laws on State Rates of Returns to Prison* (July 2015) (unpublished PhD dissertation, University of Maryland, on file with NCJRS) (showing correlation between various collateral consequences, employment rates, and recidivism); Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193 (2004) (same); Richard P. Seiter & Karen R. Kadela, *Prisoner Reentry: What Works, What Does Not, and What Is Promising*, 49 CRIME AND DELINQUENCY 360 (2003) (same).
21. Some organizations, such as the National Association of Criminal Defense Lawyers, have suggested an even more aggressive approach to addressing the problems created by overweening collateral consequences. See NAT'L ASSOC. CRIM. DEFENSE LAWYERS, *COLLATERAL DAMAGE: AMERICA'S FAILURE TO FORGIVE OR FORGET IN THE WAR ON CRIME* 33 (2014), <http://bit.ly/1pqvFvA> (hereinafter NACDL).
22. See Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PENN. L. REV. 1789, n. 25 (2012); JOHN POTTER, *ANTIQUITIES OF GREECE* 124 (2d ed. 1706) (listing crimes of infamy).
23. See Kalt, *supra* note 13, at 73–74 (one alternative rationale is “that felons have violated the social contract and should be excluded from self-government”).

24. See Margaret Colgate Love, *The Collateral Consequences of Padilla v. Kentucky: Is Forgiveness Now Constitutionally Required?*, 160 U. PENN. L. REV. 113, 114-15 (2011) (referencing historical sources).
25. Chin, *supra* note 22; see also, e.g., 4 WILLIAM BLACKSTONE, COMMENTARIES \*372 (listing collateral consequences of conviction under the Test Acts).
26. See Harry David Saunders, *Civil Death—A New Look at an Ancient Doctrine*, 11 WM. & MARY L. REV. 988 (1970).
27. Avery v. Everett, 18 N.E. 148, 150 (N.Y. 1888) (quoting 1 JOSEPH CHITTY, A PRACTICAL TREATISE ON CRIMINAL LAW \*724).
28. Saunders, *supra* note 26, at 990. Execution could be prevented at early common law by benefit of clergy, which also “restored” the rights of a convicted felon “to all capacities and credits, and the possession of his lands, as if he had never been convicted.” 4 WILLIAM BLACKSTONE, COMMENTARIES \*374.
29. Parker v. Ellis, 362 U.S. 574, 593-94 (1960) (Warren, C.J., dissenting); see also *Weems*, 217 U.S. 349 (discussing collateral consequences); 4 BLACKSTONE, COMMENTARIES \*362-63 (same at common law).
30. See Saunders, *supra* note 26, at 990 nn.10-11 (citing state civil death statutes as of 1970); Frazer v. Fulcher, 17 Ohio 260, 262-64 (1848) (distinguishing civil death at common law from the consequences of a life sentence under a statute of New York); Note, *Civil Death Statutes—Medieval Fiction in a Modern World*, 50 HARV. L. REV. 968 (1937) (citing state civil death statutes).
31. See IBAHO CODE § 18-310(1) (2004); N.Y. CIV. RIGHTS LAW § 79-a(1); R.I. GEN. LAWS § 13-6-1 (2013).
32. See Chin, *supra* note 22, at 1793-98 (on the history of civil death at common law and in the United States); Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 STAN. L. & POL’Y REV. 153 (1999) (on scope of collateral consequences in the United States).
33. H.R. REP. NO. 98-1017, at 134 (1984).
34. Velmer S. Burton, Jr. et al., *The Collateral Consequences of a Felony Conviction: A National Study of State Statutes*, 51 FED. PROBATION 52 (1987); Amy P. Meek, *Street Vendors, Taxicabs, and Exclusion Zones: The Impact of Collateral Consequences of Criminal Convictions at the Local Level*, 75 OHIO ST. L.J. 1 (2014); Kathleen M. Olivares et al., *The Collateral Consequences of a Felony Conviction: A National Study of State Legal Codes 10 Years Later*, 60 FED. PROBATION 11, 14-15 (1996) (“[An] analysis of state legal codes reveals an increase between 1986 and 1996 in the extent to which states restrict the rights of convicted felons.... [T]here was an increase in the number of states restricting six rights; voting, holding office, parenting, divorce, firearm ownership, and criminal registration increased.”); Jeremy Travis, *Invisible Punishment*, in THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 18 (Marc Mauer & Meda Chesney-Lind eds., 2002).
35. See *Weems*, 217 U.S. at 404 (White, J., dissenting); see also *Ewing v. California*, 538 U.S. 11, 27-28 (2003) (plurality opinion) (absent a violation of due process or imposition of cruel and unusual punishment, concern for the “wisdom, cost-efficiency, and effectiveness” of criminal punishment “is appropriately directed at the legislature.”); *United States v. Hudson and Goodwin*, 11 U.S. 32 (1812); *United States v. Bass*, 404 U.S. 336, 348 (1971).
36. See, e.g., *Smith v. Doe*, 538 U.S. 84 (2003) (holding that Alaska’s Sex Offender Registration Act did not violate the Ex Post Facto Clause); *Helvering v. Mitchell*, 303 U.S. 391, 399 (1938) (finding that the Double Jeopardy Clause does not prevent Congress from imposing “both a criminal and a civil sanction in respect to the same act or omission; for the double jeopardy clause prohibits merely punishing twice, or attempting a second time to punish criminally, for the same offense.”); *Hawker v. New York*, 170 U.S. 189 (1898) (holding that a state law barring felons from medical practice, even as applied retroactively, did not violate U.S. CONST. art. I, § 10); *Calder v. Bull*, 3 U.S. 386 (1798) (holding that the Ex Post Facto Clause applies exclusively to criminal punishment).
37. See, e.g., *Hawker*, 170 U.S. at 196-200; *United States v. Gonzalez*, 202 F.3d 20, 27 (1st Cir. 2000) (arguing that a collateral consequence, no matter how severe, is “not the sentence of the court which accept[s] the plea but of another agency over which the trial judge has no control and for which he has no responsibility.”), *abrogated by Padilla v. Kentucky*, 559 U.S. 356 (2010); *United States v. George*, 869 F.2d 333, 337 (7th Cir. 1989) (A collateral consequence “may result from a criminal prosecution, but is not a part of or enmeshed in the criminal proceeding.”).
38. See Ram Subramanian et al., *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction*, VERA INST. (2014), <http://archive.vera.org/sites/default/files/resources/downloads/states-rethink-collateral-consequences-report-v4.pdf> (on state reforms) (hereinafter VERA); AM. BAR ASSOC., *National Inventory of the Collateral Consequences of Conviction*, <http://www.abacollateralconsequences.org/> (2013) (hereinafter ABA Inventory).
39. In *Padilla v. Kentucky*, 559 U.S. 356 (2010), a longtime U.S. resident and Vietnam veteran was arrested and pled guilty to transporting marijuana after defense counsel assured him that deportation would not follow a guilty plea. The federal government did institute deportation proceedings. Padilla argued he had inadequate notice of the consequences of his plea. The Supreme Court held that defense counsel must advise noncitizen defendants of potential immigration consequences of a conviction. See Gabriel J. Chin, *Making Padilla Practical: Defense Counsel and Collateral Consequences at Guilty Plea*, 54 HOW. L.J. 675 (2011); Case Comment, *United States v. Muhammad: Tenth Circuit Holds that Defendant Need Not Be Informed of Collateral Consequences Before Pleading No Contest*, 128 HARV. L. REV. 1860 (2015) (arguing that “defendants have a constitutional right to knowledge of the direct—but not collateral—consequences of their plea.”).
40. See, e.g., Jo Craven McGinty, *How Many Americans Have a Police Record? Probably More Than You Think*, WALL ST. J. (Aug. 7, 2015), <http://on.wsj.com/1MSctje>; Peter Wagner & Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2016*, PRISON POL’Y INITIATIVE (Mar. 14, 2016), <http://www.prisonpolicy.org/reports/pie2016.html>.



41. Palazzolo, *supra* note 3; see also Meek, *supra* note 34.
42. See ABA Standards, *supra* note 7, at 21, 22. While some states apply collateral sanctions only to convictions rendered in that state, others apply sanctions based on convictions rendered in other jurisdictions as well, so ex-offenders must often scour the codes of multiple states if they wish to know the full scope of disabilities that might apply to them.
43. Margaret Colgate Love, *Paying Their Debt to Society: Forgiveness, Redemption, and the Uniform Collateral Consequences of Conviction Act*, 54 HOW. L.J. 753, 784 (2011); see also ABA Standards, *supra* note 7; OH. JUST. & POL'Y CTR., CIVIL IMPACTS OF CRIMINAL CONVICTIONS UNDER OHIO LAW, <http://civiccoho.org/> (state database of collateral consequences, a keyword search of "mandatory" on Dec. 29, 2016, resulted in 596 entries).
44. NACDL, *supra* note 21, at 33 (statement of Gary Mohr, Director, Ohio Department of Rehabilitation and Correction); see also Frank et al., *supra* note 14, at 4-5.
45. DEP'T OF JUSTICE, FEDERAL STATUTES IMPOSING COLLATERAL CONSEQUENCES UPON CONVICTION, 3-4 (2000), <http://bit.ly/2eUGdiS> (hereinafter DOJ Report).
46. See, e.g., Matthew Wolfe, *From PTSD to Prison: Why Veterans Become Criminals*, DAILY BEAST (July 28, 2013), <http://www.thedailybeast.com/articles/2013/07/28/from-ptsd-to-prison-why-veterans-become-criminals.html>; David Wood, *Combat Veterans with PTSD, Anger Issues More Likely to Commit Crimes: New Report*, WORLD POST (Oct. 10, 2012), [http://www.huffingtonpost.com/2012/10/09/veterans-ptsd-crime-report\\_n\\_1951338.html](http://www.huffingtonpost.com/2012/10/09/veterans-ptsd-crime-report_n_1951338.html).
47. See Marc Mauer & Virginia McCalmont, *A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits*, SENTENCING PROJECT (Updated Sept. 2015), available at <http://sentencingproject.org/wp-content/uploads/2015/12/A-Lifetime-of-Punishment.pdf>. In 2015, 37 states enforced the TANF ban; 34 states enforced the SNAP ban; 25 states conditioned receipt of welfare on the nature of conviction(s) (e.g., individuals convicted of drug possession but not manufacturing or distribution may receive benefits); some looked to completion of drug treatment programs or a post-conviction waiting period. *Id.* at 2. See also ABA Standards, *supra* note 7, at 39 (arguing that prisoners themselves do not need and should not receive welfare assistance while in prison).
48. 24 C.F.R. § 966.4.
49. See NACDL, *supra* note 21, at 33 (providing, e.g., that California bans "every person on the [sex-offender] registry" from public housing, so "those convicted of public urination in California are barred for life from public housing while those convicted of more serious violent offenses are not.>").
50. See, e.g., Judge Harold Baer, Jr., *Collateral Consequences of Conviction: A Reminder of Some Possible Civil Penalties*, at 8 (2011), available at <http://bit.ly/2jpieN0>; RANDY T. LEAVITT, COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS 6-7 (2009), available at [http://randyleavitt.com/11\\_Leavitt.pdf](http://randyleavitt.com/11_Leavitt.pdf).
51. See generally ABA Standards, *supra* note 7; Devah Prager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 960 (2003) (discussing employment barriers based on prior criminal conviction); Joe Palazzolo, *For Americans Who Served Time, Landing a Job Proves Tricky*, WALL ST. J. (May 17, 2015), <http://on.wsj.com/1HcwLfY> (same).
52. DOJ Report, *supra* note 45, at 3; 10 U.S.C. § 504(a) (2006).
53. See, e.g., *Can a Felon Work for the Government?*, JOBS FOR FELONS HUB (Nov. 11, 2015), <https://www.jobsforfelonshub.com/can-a-felon-work-for-the-government/>; FLA. STAT. § 943.13(4) (2016).
54. See U.S. Equal Emp't Opportunity Comm'n, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (Apr. 25, 2012) (§§ III.A & VI.A), [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm); Chin, *supra* note 22, at 1800; see also VERA, *supra* note 38, at 20 (noting state bill to loosen state restrictions on ex-offenders from private security employment).
55. See Chin, *supra* note 22, at 1800.
56. DOJ Report, *supra* note 45, at 4-5.
57. See VA. CODE § 18.2-471; § 47.1-4; ABA Inventory, *supra* note 38 (a search for mandatory employment-related restrictions under Virginia law generated 188 search results as of Jan. 16, 2017).
58. See OH. JUST. & POL'Y CTR., *supra* note 43; ABA Inventory, *supra* note 38 (a search for mandatory employment-related restrictions under Ohio law generated 666 search results as of Jan.16, 2017).
59. See Palazzolo, *supra* note 3.
60. See *id.*; Meek, *supra* note 34.
61. See Meek, *supra* note 34, at 17.
62. Chin, *supra* note 22, at 1790-91.
63. Meek, *supra* note 34, at 15.
64. *Id.*
65. This does not even scratch the surface. See Paul J. Larkin, Jr., *Public Choice Theory and Occupational Licensing*, 38 HARV. J. L. & PUB. POL'Y 209 (2015).

66. See, e.g., Daniel Walters, *From Prison to Olympia*, INLANDER (Jan. 14, 2016), <http://www.inlander.com/spokane/from-prison-to-olympia/Content?oid=2658314> (anecdotes of employment barriers of collateral consequences).
67. Eugene L. Meyer, *Prisoners Learning Barber Trade in Jail*, WASH. POST (Oct. 3, 2001), available at <http://articles.latimes.com/2001/oct/03/news/cl-52695>; Suzanne Le Mignot, *Barber School Gives Jail Inmates Second Chance*, CBS CHI. (Oct. 5, 2012), available at <http://chicago.cbslocal.com/2012/10/05/barber-school-gives-jail-inmates-second-chance/>; James Miller, *Marion Correctional Institution's Barber Program Gives Inmates Get [sic] a Clean-cut Benefit*, MARION STAR (April 29, 2014), <http://www.marionstar.com/story/news/2014/04/29/barber-program-gives-inmates-get-a-clean-cut-benefit-/8482799/>; Larry Yellen, *Stateville's First-ever Class of Barbers Graduate*, FOX 32 (Nov. 18, 2015), <http://www.fox32chicago.com/news/local/51335959-story>.
68. See, e.g., Mike Cronin, *Texas Aids Convicted Felon in Training as Barber but Denies License*, TEX. WATCHDOG (June 7, 2012), <http://www.texaswatchdog.org/2012/06/texas-aids-convicted-felon-in-training-as-barber-but-denies/1339021201.column>; Michael Schulte, *Felony Conviction, Barrier to Obtaining Professional License*, GA. CTR. FOR OPPORTUNITY (Nov. 2014), <http://georgiaopportunity.org/access-professional-licenses-benefit-returning-citizens/> (listing some of the “80 professions that are off-limits to those with a felony conviction, including barber, cosmetologist, electrical contractor, plumber, conditioned air contractor, auctioneer, utility contractor, registered trade sanitarian, and scrap metal processor”); Sondra Wolfer & Helen Peterson, *Ex-Con Barber's Cut Some Slack*, N.Y. DAILY NEWS (Feb. 21, 2003), <http://www.nydailynews.com/archives/news/ex-con-barber-cut-slack-article-1.676409>; Bryant Jackson-Green, *How Occupational Licensing Blocks Path to Success for Ex-Offenders*, ILL. POL'Y (Apr. 7, 2015), <https://www.illinoispolicy.org/how-occupational-licensing-blocks-path-to-success-for-ex-offenders/> (listing licenses that can be denied due to a felony record in Illinois, including barber, nail technician, pet shop operator, referee, livestock dealer, and dance hall operator).
69. Stephen Slivinski, *Turning Shackles into Bootstraps, Why Occupational Licensing Reform Is the Missing Piece of Criminal Justice Reform* (Center for the Study of Economic Liberty at Arizona State University Policy Report No. 2016-01, Nov. 7, 2016) (estimating “that between 1997 and 2007 the states with the heaviest occupational licensing burdens saw an average increase in the three-year, new-crime recidivism rate of over 9%. Conversely, the states that had the lowest burdens and no [‘good-character’] provisions saw an average decline in that recidivism rate of nearly 2.5%.”).
70. See *supra* note 20, the works of Sohoni; Uggen & Manza; Seiter & Kadela.
71. See *id.*; see also Amy L. Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, 270 NAT'L INST. JUST. J. 42 (2012), available at <http://www.nij.gov/journals/270/pages/criminal-records.aspx> (citing related materials from the Justice Department); MICHELLE NATIVIDAD RODRIGUEZ & MAURICE Emsellem, 65 MILLION “NEED NOT APPLY,” NAT'L EMPLOYMENT L. PROJECT 3 n. 6 (2011) (arguing that “the opportunity for stable employment actually lowers crime recidivism rates and thus increases public safety.”), available at [http://www.nelp.org/content/uploads/2015/03/65\\_Million\\_Need\\_Not\\_Apply.pdf](http://www.nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply.pdf). Collateral consequences likely account for significant losses in potential economic growth. At least one study has connected collateral consequences to a 1.5 percent to 1.7 percent reduction in the employment rate for men and estimates that “[i]n GDP terms, these reductions in employment cost the U.S. economy between \$57 [billion] and \$65 billion in lost output” in 2008 alone. John Schmitt & Kris Warner, *Ex-offenders and the Labor Market*, CTR. FOR ECON. & POL'Y RES., at 14 (Nov. 2010). “Survey results suggest that between 60 [percent] and 75 percent of ex-offenders are jobless up to a year after release.” *Research on Reentry and Employment*, NAT'L INST. OF JUST., DEP'T OF JUSTICE, [HTTP://BIT.LY/1H8W6KX](http://bit.ly/1h8W6Kx) (last visited Jan. 9, 2017).
72. See *Ex parte Garland*, 71 U.S. 333 (1866) (discussing the consequences of a pardon); NACDL, *supra* note 21, at 20 (discussing expungement); COLLATERAL CONSEQUENCES RESOURCE CENTER, *State-Specific Resources*, <http://ccresourcecenter.org/resources-2/state-specific-resources/> (last accessed Oct. 25, 2016) (discussing various state and federal processes for restoration of rights); Joe Palazzolo, *Brooklyn Judge Issues First Federal “Certificate of Rehabilitation”*, WALL ST. J. (Mar 8, 2016), <http://blogs.wsj.com/law/2016/03/08/brooklyn-judge-issues-first-federal-certificate-of-rehabilitation/>.
73. John G. Malcolm & John-Michael Seibler, *Mandatory “Ban the Box” Requirements May Do More Harm Than Good*, HERITAGE FOUNDATION LEGAL MEMORANDUM No. 198 (Jan. 30, 2017), available at <http://www.heritage.org/research/reports/2017/02/mandatory-ban-the-box-requirements-may-do-more-harm-than-good>.
74. See ABA Standards, *supra* note 7, standard 19-2.1; see also Margaret Colgate Love, *Collateral Consequences After Padilla v. Kentucky: From Punishment to Regulation*, 31 ST. LOUIS U. PUB. L. REV. 87, 118-21 (2012) (arguing that counsel should inform defendants of potential collateral consequences).
75. See generally ABA Standards, *supra* note 7; see also DEP'T OF JUSTICE, SMART ON CRIME—REFORMING THE CRIMINAL JUSTICE SYSTEM FOR THE 21ST CENTURY 5 (Aug. 2013), <https://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf>.
76. See VERA, *supra* note 38 (on state reform efforts).