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REFLECTIONS AND PERSPECTIVES ON REENTRY AND COLLATERAL CONSEQUENCES

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I. INTRODUCTION

The United States is in the midst of a prisoner reentry crisis. In 1980, fewer than 170,000 people were released from federal and state prisons in the United States.¹ By 2008, the number of individuals released skyrocketed to 735,454.² As a result, more individuals, families, and communities are impacted by reentry than at any point in history. This crisis will become more heightened in the immediate future, as the number of individuals completing their prison sentences will continue to climb and as states that can no longer afford to incarcerate at massive levels—and at staggering expense³—will be forced to release individuals early from their sentences or create other strategies to reduce criminal justice spending.⁴

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¹ Jeremy Travis, U.S. DEP'T OF JUSTICE, *But They All Come Back: Rethinking Prisoner Reentry*, 7 SENT'G & CORRS. 1, 1 (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181413.pdf>.

² WILLIAM J. SABOL ET AL., U.S. DEP'T OF JUSTICE, PRISONERS IN 2008, at 4 (2009), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>. Additionally, approximately nine million individuals are released annually from local jails. Allen J. Beck, Chief, Corr. Statistics Program, U.S. Dep't of Justice, *The Importance of Successful Reentry to Jail Population Growth* (June 27, 2006), available at <http://www.urban.org/projects/reentry-roundtable/upload/beck.ppt> (noting that jail admissions/releases statistics of 12 million correlate to 9 million unique individuals each year).

³ According to the Pew Center, state spending on corrections eclipsed \$49 billion in 2008. THE PEW CENTER ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA 2008, at 11 (2008), available at http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf. These costs are estimated to increase \$25 billion by 2011. *Id.*

⁴ See, e.g., David Crary, *States' Budget Crises Prompting Urgent Prison Policy Reforms*, HUFFINGTON POST, Jan. 10, 2009, http://www.huffingtonpost.com/2009/01/10/states-budget-crises-prom_n_156890.html (describing several state reform measures); see also Jeffrey

The reentry crisis follows three decades of exploding incarceration rates. “Tough on crime” measures that were implemented in the 1980s, most notably the War on Drugs, led to record numbers of incarcerated individuals⁵ spending longer periods of time behind bars.⁶ All individuals convicted of criminal offenses, regardless of their sentences, are forced to confront the various collateral consequences—additional legal penalties—that result from their convictions. These consequences, most of which attach to both felony and misdemeanor convictions,⁷ can include ineligibility for federal welfare benefits, government-assisted housing, and jury service; various types of employment and employment-related licenses, and military service; as well as sex offender registration and voting disenfranchisement.⁸

Collateral consequences are nothing new. They are remnants of the “civil death”⁹ that was imported from England and imposed on lawbreakers during the colonial period.¹⁰ However, what is relatively new is the scope of collateral consequences that burden individuals long past the expiration of their sentences and which, individually and collectively, frustrate their ability to move past their criminal records. At no point in United States history have collateral consequences been as expansive and entrenched as

Rosen, *Prisoners of Parole: Could Keeping Convicts from Violating Probation or Their Terms of Release Be the Answer to Prison Overcrowding?*, N.Y. TIMES MAG., Jan. 10, 2010, at 38 (“[T]he U.S. prison population is increasingly seen as unsustainable for both budgetary and moral reasons . . .”).

⁵ E.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 59 (2010) (“Convictions for drug offenses are the single most important cause of the explosion in incarceration rates in the United States.”).

⁶ See MARK MOTIVANS, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, FEDERAL CRIMINAL JUSTICE TRENDS, 2003, at 33 tbl.25 (2006), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fcjt03.pdf>.

⁷ In some instances, these consequences can attach even to non-criminal offenses. E.g., McGregor Smyth, *Holistic Is Not a Bad Word: A Criminal Defense Attorney’s Guide to Using Invisible Punishments as an Advocacy Strategy*, 36 U. TOL. L. REV. 479, 482 (2005) (explaining that a conviction for disorderly conduct, a non-criminal violation, “makes a person presumptively ineligible for New York City public housing for two years”).

⁸ For a detailed overview of collateral consequences, see MARGARET COLGATE LOVE, *RELIEF FROM THE COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: A STATE-BY-STATE RESOURCE GUIDE* (2006).

⁹ “Civil death” has been defined as “the condition in which a convicted offender loses all political, civil, and legal rights.” Alec C. Ewald, “*Civil Death*”: *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1049 n.13 (2002).

¹⁰ *Id.* at 1061 (“English colonists in North America transplanted much of [England’s] common law regarding the civil disabilities of convicts, and supplemented it with statutes regarding suffrage.”).

they are today.¹¹ Indeed, the War on Drugs and other law and order policies have not only fostered an instinctive reliance on incarceration but also an intricate web of federal, state, and local post-sentence legal penalties that can burden individuals for the rest of their lives.

Collateral consequences impact not only those individuals upon whom they fall but also their families and communities.¹² For example, these consequences make it extraordinarily difficult and, in many instances impossible, for individuals with criminal records to find employment. As a result, they are unable to contribute financially to their family households. Moreover, just as mass incarceration has disproportionately impacted individuals and communities of color in urban centers in the United States, mass reentry is now doing the same.¹³ Thus, these individuals are returning in large numbers to the relatively few communities where they lived prior to incarceration and are paralyzed by their criminal records for various reasons, including the collection of collateral consequences that confront them during the reentry process and beyond.

Jeremy Travis has appropriately described these collateral consequences as “invisible punishment.”¹⁴ They are “invisible” because, despite their impact on individuals who cycle through the criminal justice system, they are not considered to be part of this system. They are civil, not criminal, penalties. As such, collateral consequences for the most part are ignored throughout the criminal process. Defense attorneys, prosecutors, and judges do not incorporate collateral consequences into their advocacy and sentence practices. As a result, defendants are generally not informed

¹¹ See JOAN PETERSILIA, *WHEN PRISONERS COME HOME* 136 (2003) (noting that collateral consequences “are growing in number and kind, being applied to a larger percentage of the U.S. population and for longer periods of time than at any point in U.S. history”); J. McGregor Smyth, Jr., *From Arrest to Reintegration: A Model for Mitigating Collateral Consequences of Criminal Proceedings*, 24 CRIM. JUST. 42, 42 (2009) (“The collateral consequences of criminal proceedings inflict damage on a breadth and scale too shocking for most lawyers and policy makers to accept.”).

¹² E.g., Robert M.A. Johnson, *Collateral Consequences*, 16 CRIM. JUST. 32, 32 (2001) (“On a societal level, a problem arises when the degree of these collateral consequences reduces the possibility that [individuals] can return to be productive members of our society.”).

¹³ Jeremy Travis & Joan Petersilia, *Reentry Reconsidered: A New Look at an Old Question*, 47 CRIME & DELINQ. 291, 299-301 (2001).

¹⁴ Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 16 (Marc Mauer & Meda Chesney-Lind eds., 2002) (explaining that these laws constitute “invisible punishment,” because they “operate largely beyond public view, yet have very serious, adverse consequences for the individuals affected”).

of—or warned about—collateral consequences as part of the plea bargaining or sentencing processes.¹⁵

This Article first provides a brief history of collateral consequences and reentry. It then describes the expansion of these consequences, particularly over the past few decades, and their impact on reentry. It concludes by highlighting some current efforts to better understand the scope of these consequences.

II. REFLECTIONS

Collateral consequences have always attached to criminal convictions in the United States.¹⁶ They descend from the concept of “civil death,” which continental European systems imposed upon individuals who committed criminal acts.¹⁷ As Professor Nora Demleitner explains, “[c]ivil death’ entailed, among other things, the permanent loss of the right to vote, to enter into contracts, and to inherit or bequeath property.”¹⁸ While the United States never fully embraced “civil death,” it did, until the 1960s, impose collateral consequences that dissolved marriages automatically, disqualified individuals from various employment-related licenses, and barred individuals from entering contracts or engaging in civil litigation.¹⁹

For much of the twentieth century, rehabilitation was a central punishment goal in the United States.²⁰ The rehabilitative model sought to reform the offender, so that he or she would overcome his or her criminal record as well as the reasons that led to his or her involvement with the criminal justice system and eventually lead a productive, law-abiding life.

¹⁵ Gabriel J. Chin & Richard W. Holmes, Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 CORNELL L. REV. 697, 699 (2002) (explaining that most state and federal circuit courts have held that attorneys are not required to inform defendants about collateral consequences).

The one exception exists in the immigration context, as the United States Supreme Court has recently held that defendants in criminal proceedings must be informed of the possible deportation-related consequences of a guilty plea. *Padilla v. Kentucky*, 130 S. Ct. 1473, 1486-87 (2010).

¹⁶ E.g., JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY 252 (2005) (“Legislators of the American colonies passed laws denying convicted offenders the right to enter into contracts, automatically dissolving their marriages, and barring them from a wide variety of jobs and benefits.”) (citation omitted).

¹⁷ Travis, *supra* note 14, at 17.

¹⁸ Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 STAN. L. & POL’Y REV. 153, 154 (1999).

¹⁹ *Id.* at 154-55.

²⁰ E.g., Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457, 478 n.98 (2010) (citing Albert W. Alschuler, *The Changing Purposes of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts About the Next*, 70 U. CHI. L. REV. 1, 6 (2003)).

The rehabilitative ideal carried over to collateral consequences. In 1956, the National Conference on Parole (NCP), understanding that criminal records imposed significant legal burdens on individuals attempting to reintegrate, recommended that the “laws depriving convicted persons of civil and political rights” be abolished.²¹ In addition, the NCP, in the 1950s, and the American Law Institute, in the early 1960s, proposed various reform measures to ease the stigma and legal burdens that fell on individuals with criminal records.²² Among the proposals were expungement laws and laws granting courts discretionary authority to relieve individuals of the additional legal penalties that attached to criminal convictions.²³

The Rehabilitation Era essentially ended in the 1970s.²⁴ During the next couple of decades, the federal government and many state governments turned to retributive and incapacitative models of punishment that were less forgiving of individuals engaged in criminal activity.²⁵ The demise of the Rehabilitative Era set the stage for the tough on crime movement of the 1980s and 1990s. As Professor Nora V. Demleitner explains, the “trend” to decrease “the number and restrictiveness of statutes imposing collateral consequences on offenders . . . during the 1960s and the early 1970s . . . was halted, if not reversed, in the late 1980s and the 1990s.”²⁶

The tough-on-crime movement led to an unprecedented increase in incarceration rates and length of prison sentences.²⁷ Between 1980 and

²¹ Margaret Colgate Love, *Starting Over with a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 *FORDHAM URB. L.J.* 1705, 1708 (2003). During this time, a felony conviction potentially led to several collateral consequences, including ineligibility for military service and public office, disenfranchisement, and the “den[ial] of access to such professions as law and medicine.” Note, *The Need for Coram Nobis in the Federal Courts*, 59 *YALE L.J.* 786, 786-87 (1950).

²² For a detailed discussion of these proposals, see Love, *supra* note 21, at 1708-12.

²³ *Id.* at 1710-11.

²⁴ DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 61 (2001); see FRANCIS A. ALLEN, *THE DECLINE OF THE REHABILITATIVE IDEAL: PENAL POLICY AND SOCIAL PURPOSE* 10 (1981) (“[T]he rehabilitative ideal has declined in the United States; the decline has been substantial, and it has been precipitous.”); Alschuler, *supra* note 20, at 9 (noting that from 1970 to 1985, “rehabilitation had gone from the top of most scholars’ and reformers’ lists of the purposes of punishment to the bottom”).

²⁵ Alschuler, *supra* note 20, at 9-14.

²⁶ *E.g.*, Demleitner, *supra* note 18, at 155.

²⁷ *E.g.*, JOHN IRWIN ET AL., *JUSTICE POLICY INST., AMERICA’S ONE MILLION NONVIOLENT PRISONERS* 2 (1999), available at http://www.justicepolicy.org/images/upload/99-03_REP_OneMillionNonviolentPrisoners_AC.pdf (“Justice Department data released on March 15, 1999 show that the number of prisoners in America . . . more than tripled over the last two decades from 500,000 to 1.8 million . . .”).

2005, the number of individuals incarcerated in U.S. prisons and jails for drug possession offenses increased more than 1,000%.²⁸ These movements also led to a significant expansion of collateral consequences in the 1980s and 1990s. Many of the consequences enacted during these decades—particularly those relating to various public benefits (including food stamps) and student loans—apply only to those convicted of drug offenses.²⁹ Other collateral consequences, such as public housing restrictions, were originally federal and attached mainly to drug-related activity but have been expanded by many local governments to attach to essentially all types of criminal conduct.³⁰ As a result, collateral consequences look drastically different today than they did at the beginning of the 1980s, as they now impact virtually all aspects of life for individuals with criminal records.

III. THE PRESENT FOCUS ON REENTRY ISSUES AND COLLATERAL CONSEQUENCES

The aftershocks of the tough-on-crime movement reverberate dramatically at present. Not only are more individuals serving prison and jail sentences in the United States than at any point in its history,³¹ but record numbers of these individuals are being released from these prisons and jails each year.³² In addition, approximately one in four adults in the United States has a criminal record.³³ Given the breadth and permanence of

²⁸ DON STEMEN, VERA INST. OF JUSTICE, RECONSIDERING INCARCERATION: NEW DIRECTIONS FOR REDUCING CRIME 8 (2007), available at http://www.vera.org/download?file=407/veraincarc_vFW2.pdf.

²⁹ ALEXANDER, *supra* note 5, at 140; *Introduction to INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 6 (Marc Mauer & Meda Chesney-Lind eds., 2003) (“The drug war’s influence on political decision making and conceptions of civil liberties has been profound. . . , as legislators have increasingly adopted ever more punitive measures against those who have been convicted of a drug offense.”).

³⁰ As a result, housing-related collateral consequences attach to both felonies and misdemeanors. Some jurisdictions apply these consequences to non-criminal violations. Gwen Rubinstein & Debbie Mukamal, *Welfare and Housing—Denial of Benefits to Drug Offenders*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT*, *supra* note 17, at 37, 43-49.

³¹ At the end of 2008, approximately 1 out of 198 individuals in the United States was incarcerated in a state or federal prison. SABOL ET AL., *supra* note 2, at 1. The total incarcerated population—federal prisons, state prisons, and local jails—at this time was 2,304,115. *Id.* at 27 tbl. 8.

³² *E.g.*, NANCY G. LA VIGNE ET AL., OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP’T OF JUSTICE, PRISONER REENTRY AND COMMUNITY POLICING: STRATEGIES FOR ENHANCING PUBLIC SAFETY 3 (2006), available at http://www.urban.org/uploadedpdf/411061_COPS_reentry_monograph.pdf (noting the “historic volumes” of prisoners reentering society).

³³ *E.g.*, MADELINE NEIGHLY & MARGARET (PEGGY) STEVENSON, NAT’L EMPLOYMENT LAW PROJECT, CRIMINAL RECORDS AND EMPLOYMENT: DATA ON THE DISPROPORTIONATE

collateral consequences, these individuals are perhaps more burdened and marginalized by a criminal record today than at any point in U.S. history.

The reentry crisis over the last decade has brought significant attention to reentry issues. Federal legislation has been enacted recently that aims to, *inter alia*, expand and improve existing reentry programs, expand employment opportunities for reentering individuals, improve federal reentry programming, and reduce recidivism.³⁴ Federal, state, and local organizations have been formed or retooled to assist reentering individuals as they work through, or cope with, the various legal and non-legal issues they confront.³⁵ Within the criminal justice system, reentry courts exist in several jurisdictions.³⁶ These courts, established by the Department of Justice,³⁷ have “borrowed heavily” from the drug court model of seeking to coordinate services with graduated sanctions imposed upon individuals who violate the conditions.³⁸ In addition, national criminal justice organizations, such as the National Legal Aid and Defender Association, are addressing these issues through practitioner-related trainings and advocating for expansive criminal justice services delivery models that account for the overlapping criminal and civil issues that converge during the reentry process.

Initially, the attention to reentry issues focused on services and programs for individuals with criminal records. More recently, the attention has increasingly focused on collateral consequences. This focus stems from greater recognition of the significant, and often insurmountable, challenges these legal barriers present.

The relative lack of attention to collateral consequences to this point stems in large measure from legal interpretations that these consequences are separate civil penalties that attach to criminal convictions rather than

IMPACT ON COMMUNITIES OF COLOR (2009), available at <http://www.nelp.org/page/-/SCLP/CriminalRecordsImpactCommunitiesofColor.pdf?nocdn=1>.

³⁴ See generally Second Chance Act of 2007, Pub. L. No. 110-199, 122 Stat. 657 (codified at 42 USC § 17501 *et seq.* (2006)).

³⁵ E.g., 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, 651-52 (2006) (offering examples of various reentry programs).

³⁶ The number of reentry courts will likely expand in the near future, as the Second Chance Act authorizes the Attorney General to award grants to agencies and municipalities to establish reentry courts. Second Chance Act of 2008, 42 U.S.C. § 3797(w)(2) (Supp. 2010).

³⁷ ANTHONY C. THOMPSON, *RELEASING PRISONERS, REDEEMING COMMUNITIES: REENTRY, RACE AND POLITICS* 163 (2008).

³⁸ *Id.* at 165. For a discussion of reentry courts, including some of their shortcomings, see *Id.* at 164-65. See also Eric J. Miller, *The Therapeutic Effects of Managerial Reentry Courts*, 20 FED. SENT’G REP. 127 (2007).

penalties that are part of the direct, criminal punishment.³⁹ Thus, these consequences technically reside outside of the criminal justice system. As a result, criminal justice actors are not fully cognizant of their existence and scope. Moreover, as several commentators have observed, it is difficult—essentially impossible—to fully grasp the scope of these consequences in a given jurisdiction, because they are dispersed throughout various federal and state statutes, federal and state regulations, and local policies.⁴⁰

However, efforts are underway to increase awareness of both the existence and scope of collateral consequences. Two federal statutes, both of which were signed into law in 2008, call for these consequences, which are dispersed throughout various statutes, regulations, and policies, to be collected and analyzed. The Court Security Improvement Act of 2007⁴¹ requires the National Institute of Justice to “conduct a study to determine and compile the collateral consequences of convictions for criminal offenses in the United States, each of the fifty states, each territory of the United States, and the District of Columbia.”⁴² Specifically, this agency is to “identify any provision in the Constitution, statutes, or administrative rules of each jurisdiction . . . that imposes collateral sanctions or authorizes the imposition of disqualifications”⁴³ As a result, this Act requires an exhaustive review of the federal, state, and local consequences in each of these jurisdictions. Similarly, the Second Chance Act of 2007⁴⁴ requires that “[a] State, unit of local government, territory or Indian Tribe, or combination thereof,” applying for a grant to reauthorize existing adult and juvenile offender programs must, *inter alia*, include “a plan [to] analy[ze] . . . the statutory, regulatory, rules-based, and practice-based hurdles to reintegration of offenders into the community”⁴⁵

³⁹ *E.g.*, Pinard, *supra* note 35, at 641-48 (citing appellate court rulings declaring that collateral consequences are civil rather than criminal penalties and therefore that defendants need not be informed of these consequences as part of the guilty plea or sentencing process).

⁴⁰ *E.g.*, Gabriel J. Chin, *Race, the War on Drugs, and the Collateral Consequences of Criminal Convictions*, 6 J. GENDER, RACE & JUST. 253, 254 (2002) (explaining that collateral consequences are “unstructured” and “[n]o one knows, really, what they are”).

⁴¹ Court Security Improvement Act of 2007, Pub. L. No. 110-177, 121 Stat. 2534.

⁴² *Id.* at § 510(a).

⁴³ *Id.* at § 510(b).

⁴⁴ Second Chance Act of 2007, Pub. L. No. 110-199, 122 Stat. 657 (codified at 42 USC § 17501 *et seq.* (2006)).

⁴⁵ *Id.* at § 101(d), (e)(4). In addition, the Judiciary Committee of the House of Representatives recently held a hearing to, in part, gather more information about collateral consequences *Hearing on Collateral Consequences of Criminal Convictions: Barriers to Reentry of the for the Formerly Incarcerated Before the S. Comm on Crime, Terrorism, and Homeland Sec.*, 111th Cong. (2010), *webcast available at* http://judiciary.house.gov/hearings/hear_100609.html.

Legal organizations are also taking steps to gain greater understanding of collateral consequences. The American Bar Association (ABA), recognizing that juvenile offenders also confront a wide range of consequences that impact their ability to, *inter alia*, secure employment, enlist in the military, and reside in public housing, has formed the Juvenile Collateral Consequences Project, which will collect the consequences that attach to juvenile adjudications in all fifty states and the U.S. territories.⁴⁶

Some state bar organizations have also recognized the need to educate their members about collateral consequences. For instance, the State Bar of Michigan has created an initiative that will “consider problems in indigent representation, including the general ignorance of assigned counsel of the collateral consequences of a criminal conviction.”⁴⁷ Also, the New York State Bar Association formed the Special Committee on Collateral Consequences of Criminal Proceedings. In 2006, this committee issued an exhaustive report that compiled and analyzed several collateral consequences in New York State, including consequences related to employment, housing, public benefits, education, civic participation, and immigration.⁴⁸ The committee recommended several measures, including compiling all collateral consequences of convictions in one section of New York law,⁴⁹ providing trainings to defense attorneys, prosecutors, and judges on these consequences,⁵⁰ requiring judges to inform defendants of these consequences prior to accepting guilty pleas or at sentencing,⁵¹ developing referral programs to provide legal assistance to individuals confronting these consequences,⁵² and facilitating the legal processes available in New York State to ease the burdens created by these consequences.⁵³

Other efforts have taken the further step of recommending ways to minimize the impact of these consequences. Most prominently, in 2004,

⁴⁶ Hannah Geyer, ABA JUVENILE JUSTICE COLLATERAL CONSEQUENCES PROJ., *An Open Letter to Legal Aid Attorneys & Juvenile Defenders*, http://njjn.org/media/resources/public/resource_1418.pdf (last visited Aug. 31, 2010).

⁴⁷ Frank D. Eaman, *Public Defense in Michigan: From the Top to the Bottom*, 87 MICH. BUS. L.J. 40, 42 (2008).

⁴⁸ N.Y. STATE BAR ASS'N, “RE-ENTRY AND REINTEGRATION: THE ROAD TO PUBLIC SAFETY”: REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE ON COLLATERAL CONSEQUENCES OF CRIMINAL PROCEEDINGS (2006), *available at* http://www.nysba.org/AM/Template.cfm?Section=Substantive_Reports&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=11415.

⁴⁹ *Id.* at 391.

⁵⁰ *Id.*

⁵¹ *Id.* at 392.

⁵² *Id.*

⁵³ *Id.* at 389.

the ABA adopted standards for “[c]ollateral [s]anctions and [d]iscretionary [q]ualifications of [c]onvicted [p]ersons.”⁵⁴ These standards are broad. They assert that consequences should not be imposed unless “the conduct constituting th[e] particular offense provides so substantial a basis for imposing the sanction that the legislature cannot reasonably contemplate any circumstances in which imposing the sanction would not be justified,”⁵⁵ that counsel or the trial court inform defendants about these consequences,⁵⁶ that judges consider these consequences when imposing sentences,⁵⁷ and that judges or “a specified administrative body” have the authority to “waiv[e], modify[], or grant[] timely and effective relief from any collateral sanction.”⁵⁸

Following the ABA’s lead, the National Conference of Commissioners on Uniform State Laws authorized a project that has led to the Uniform Collateral Consequences of Conviction Act, which was approved in July 2009.⁵⁹ Similar to the ABA Standards on Collateral Sanctions, this Act urges that each state’s collateral consequences be compiled in a single document,⁶⁰ that defendants be notified of these consequences during the pretrial stage,⁶¹ at sentencing⁶² as well as prior to release from incarceration,⁶³ and that processes be implemented that allow individuals to be relieved of disabilities related to “employment, education, housing, public benefits or occupational licensing.”⁶⁴

⁵⁴ ABA STANDARDS FOR CRIMINAL JUSTICE: COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS (3d ed. 2004).

⁵⁵ *Id.* at 19-2.2.

⁵⁶ *Id.* at 19-2.3.

⁵⁷ *Id.* at 19-2.4(a).

⁵⁸ *Id.* at std. 19-2.5(a).

⁵⁹ UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT (2009), available at http://www.law.upenn.edu/bll/archives/ulc/ucsada/2009_final.pdf.

⁶⁰ *Id.* at 10. The purpose of this compilation is to “make the law accessible to judges, lawyers, legislators and defendants who need to make decisions based on it.” *Id.* at 5. The Act authorizes each state, in compiling these consequences, to rely upon the “collateral sanctions, disqualifications, and relief provisions prepared by the National Institute of Justice described in Section 510 of the Court Security Improvement Act of 2007, Pub. L. 110-177.” *Id.* at 10.

⁶¹ *Id.* at 13.

⁶² *Id.* at 17.

⁶³ *Id.*

⁶⁴ *Id.*

IV. THE FUTURE CHALLENGES OF REENTRY AND COLLATERAL CONSEQUENCES

Reentry has emerged as perhaps the most difficult and persistent criminal justice issue. It involves a complex and multi-layered mix of legal and non-legal issues that impact the record numbers of individuals released annually from U.S. prisons.⁶⁵ The issues are particularly thorny because of the broad impact mass reentry will continue to have on families and communities.

Scores of government programs and agencies are devoting significant resources to reentry issues at the federal, state, and local levels. Perhaps even more organizations—foundations, legal services organizations, policy organizations, and local organizations led or staffed by individuals with criminal records—are working tirelessly to assist individuals, families, and communities work through the myriad legal and non-legal reentry issues. Indeed, the exponential growth of these organizations over the past decade, as well as new or redirected funding streams that help to build and sustain them, exemplify the severity of the reentry crises that are confronting an ever-expanding number of reentering individuals.

The legal issues related to reentry (and specifically collateral consequences) are vast and significant. Such issues include housing, public benefits, employment, family, and broader civil rights issues. As illustrated above, there is a compelling need for legislators, legal actors, defendants, criminal justice personnel, various other decisionmakers, and the general public to be aware of the collateral consequences that attach to convictions and that long outlast the direct punishment tied to those convictions. The efforts that have been undertaken to gather and compile these consequences will facilitate greater understanding of the true impact of criminal convictions.

However, communities of lawyers are, and will continue to be, needed to help address—or, at the very least, to minimize—these legal issues. Specifically, coordinated legal services—services that breakdown the traditional divide between “criminal” and “civil” issues and recognize the complex, interconnected legal issues that stem from *any type* of conviction and regardless of the sentence imposed—are necessary to meet the vast legal challenges that await these individuals at the conclusion of their sentences.

Perhaps most significantly, collateral consequences must be restructured to minimize the legal hurdles imposed on individuals with criminal records. These consequences need to be tailored to individual

⁶⁵ See Beck, *supra* note 2 (documenting the number of individuals released from prison in 2008).

criminal conduct and, as the ABA recommends, should be waived in instances when judges deem appropriate. In essence, the criminal justice system of the future has to be one that bends a little to afford individuals with criminal records the opportunities to move beyond their transgressions and lead productive post-punishment lives.

V. CONCLUSION

The emergent reentry crisis requires that the federal and state criminal justice systems in the United States be restructured to focus on reentry issues and needs, all of which impact the millions of individuals with criminal records, their families, and their communities. A criminal conviction in the United States is no longer the end point of the criminal process but rather the impetus for a collection of so-called civil penalties that will hamper the convicted individual long beyond the conclusion of his or her formal sentence. The criminal justice system of the future must recognize and account for the multitudinous effects of a criminal conviction—both the various civil penalties that immediately attach to the conviction and the impact these penalties have on the individuals, their families, and communities. Thus, the overarching goal of the criminal justice system should be to allow individuals to maximize their chances of moving past their criminal records to lead productive post-punishment lives. This is the challenge moving forward.