

BEYOND THE SENTENCE — UNDERSTANDING COLLATERAL CONSEQUENCES

BY SARAH B. BERSON

NIJ-funded database provides interactive resource on federal and state collateral consequences.

Criminal conviction brings with it a host of sanctions and disqualifications that can place an unanticipated burden on individuals trying to re-enter society and lead lives as productive citizens. The impact of these “collateral consequences” is often discussed in the context of offender re-entry, but they attach not only to felonies and incarcerated individuals but also to misdemeanors and individuals who have never been incarcerated. Collateral consequences tend to last indefinitely, long after an individual is fully rehabilitated.

Many collateral consequences affect a convicted person’s employment and business opportunities; others deny access to government benefits and program participation, including student loans, housing, contracting and other forms of participation in civic life.

The Court Security Improvement Act of 2007 directed NIJ to carry out a national survey of collateral consequences. Through a competitive process, NIJ awarded a grant to the American Bar Association (ABA) to

undertake the comprehensive, systematic collection of the collateral consequences of conviction for both state and federal offenses in each of the 50 states, the U.S. territories and the District of Columbia.

In 2012, the ABA launched the National Inventory of the Collateral Consequences of Conviction, an interactive database of sanctions and restrictions across the nation. Users can search by keyword, triggering offense or type of consequence at <http://www.abacollateralconsequences.org>.

Bringing Hidden Penalties to Light

“Collateral consequences are often spoken of as if they’re an absolute mystery,” said Margaret Love, the former director of the Inventory project. (Love directed the project from January 2012 to May 2013.) “People know about losing the right to vote for some period of time after being convicted of a felony, but once you get past that, there are a surprising number of laws and rules that restrict opportunities based on a criminal history.”

What Collateral Consequences Are in the Database?

Among the more common collateral consequences in the National Inventory of the Collateral Consequences of Conviction are those that involve denial of employment or occupational licensing and those that affect tangible benefits, such as education, housing, public benefits and property rights. Other consequences in the database include:

- Ineligibility for government contracts and debarment from program participation
- Exclusion from management and operation of regulated businesses
- Restrictions on family relationships and living arrangements, such as child custody, fostering and adoption
- Bond requirements and other heightened standards for licensure
- Registration, lifetime supervision and residency requirements
- Publication of an individual's criminal record or mandated notification to the general public or to particular private individuals
- Collateral consequences arising from juvenile adjudications
- Collateral consequences that derive from obligations of others (e.g., laws making a business license or government contract depend upon not employing anyone with a conviction)

The database also includes relief provisions by which collateral consequences may be avoided or mitigated.

To learn more about the database, including how criminal background checks, self-reporting disclosures and good moral character requirements were handled, see the User Guide at NIJ.gov, keywords: ABA user guide.

Although these consequences can have a profound impact on the lives of those convicted, until recently, judges, prosecutors or defense counsel seldom discussed or considered collateral consequences.¹ Relevant laws and regulations in the U.S. are notoriously difficult to track down and understand. As a result, attorneys and judges are not familiar with all of the collateral consequences triggered by certain crimes. They may not have the time or ability to find them and then determine whether they are applicable to a defendant.

Consequently, the people involved in criminal proceedings may not realize the full ramifications of being found guilty or pleading guilty to particular charges.

Civil lawyers have similar difficulty in counseling clients who were convicted years in the past.

A Tool for Practice, a Resource for Research and Policy

The Inventory can serve as a first-stop resource for judges, defense counsel and prosecutors, allowing them to quickly locate the significant details of relevant collateral consequences. This, in turn, will allow lawyers and their clients to consider these consequences as part of criminal proceedings. It will also allow lawyers to help clients living with the adverse effects of a criminal record long after the case is over.

Legislators, policymakers and researchers also can use the database to:

- Study trends and patterns in the collateral consequences of conviction.
- Examine restrictions and compare them across states to decide whether a proposed new law is necessary and whether it deviates significantly from similar restrictions imposed in other jurisdictions.
- Determine changes that can improve a convicted offender's chance of rebuilding his or her life and desisting from crime.

The Inventory's search interface allows users to select one or more jurisdictions and then search by keyword, consequence category (e.g., employment, licensure, property rights, education), triggering offense category or some combination. Search results link to summaries of relevant state or federal code sections. Each summary includes a detailed description of the consequence, whether it is discretionary or mandatory, how long it lasts and whether any relief is available, and what offenses trigger it.

As of May 2013, the database includes information for the federal government and 17 states. As Love explained, the project team thought it was important to bring the Inventory online before it was completed: "We wanted the public to see what we were doing, and we wanted to get feedback to know what needs improving."

To create the Inventory, the team had to locate, code and catalogue the laws and regulations that cover collateral consequences. Most states have close to 1,000, and many have more.^{2,3} (See sidebar, "What Collateral Consequences Are in the Database?")

"The only prior effort to systematically collect laws across all 50 states that affected a particular set of people was in the 1950s," Love said, referring to Anna Pauline (Pauli) Murray's 1951 survey and analysis of U.S. segregation and civil rights laws, *States' Laws on Race and Color*. "Studies of collateral consequences have been done on a state-to-state basis, but they're largely narrative, and while complete for what they

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are, they don't have the same thoroughness as the computerized database."

Love adds that the database will remain relevant only as long as it is kept up-to-date. She acknowledges that maintaining the database will be a challenge — it is, in fact, already a challenge for the states that have been entered — but not an insurmountable one. Early in the project, the team laid the groundwork for quality control in the initial survey, creating coding protocols and interpretation rules to ensure consistency among team members. This work will make it easier to keep the database current than it was to build it from the ground up.

Looking Toward the Future

At the launch of the database in 2012, Senator Patrick Leahy (D-VT), who spearheaded the effort to include the collateral consequences survey in the Court Security Improvement Act of 2007, said, "As a former prosecutor, I believe there should be serious consequences for criminal activity. I also know well that most of those convicted of crimes will return to our communities, and we should be doing everything we can to give them the skills and opportunities they need to reintegrate successfully, rather than returning to a life of crime. That is the right thing to do, and it makes us all safer."⁴

The Inventory has the potential to help stakeholders across the criminal justice system better understand the complexity and reach of collateral consequences

and make more informed decisions to enhance public safety and help offenders successfully return to society. It also will greatly improve the delivery of civil legal services to those who have had a past adverse encounter with the justice system.

Visit <http://www.abacollateralconsequences.org> to use the tool and learn more about the project.

About the Author

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For More Information

- Learn about re-entry research on NIJ's Web topic page, [NIJ.gov](http://www.nij.gov), keyword: re-entry.
- Read more about background checks and employment:
 - "‘Redemption’ in an Era of Widespread Criminal Background Checks," by Alfred Blumstein and Kiminori Nakamura, at [NIJ.gov](http://www.nij.gov), keyword: redemption.
 - "In Search of a Job: Criminal Records as Barriers to Employment," by Amy Solomon, at [NIJ.gov](http://www.nij.gov), keywords: criminal records.
- Visit the Federal Interagency Reentry Council website, <http://www.nationalreentryresourcecenter.org/reentry-council>.

Notes

1. This situation has begun to change since the Supreme Court required notice of deportation consequences in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010).
2. Colgate Love, Margaret, Jenny Roberts, and Cecelia Klingele, *Collateral Consequences of Criminal Convictions: Law, Policy and Practice*. Eagan, Minn.: NACDL Press and Thomson Reuters Westlaw, 2013, 521 (section 9:10).
3. For purposes of deciding what laws and rules should be included in the database, the project team used the definition of collateral consequences in Section 510 of the Court Security Improvement Act of 2007: "a collateral sanction or a disqualification." For more information, see <http://www.gpo.gov/fdsys/pkg/PLAW-110publ177/pdf/PLAW-110publ177.pdf>.
4. Remarks by Senator Patrick Leahy on the Launch of the "National Inventory of the Collateral Consequences of Conviction," Sept. 19, 2012, <http://www.leahy.senate.gov/press/remarks-of-senator-patrick-leahy-on-the-launch-of-the-national-inventory-of-the-collateral-consequences-of-conviction>.

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