



# Beyond the Box

Increasing Access to Higher Education for  
Justice-Involved Individuals

May 9, 2016

U.S. Department of Education

**U.S. Secretary of Education**

John B. King, Jr.

*Secretary of Education*

May 2016

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# Contents

<b>Purpose of This Guide .....</b>	<b>1</b>
<b>Background .....</b>	<b>3</b>
<b>The Vital Importance of Campus Safety .....</b>	<b>8</b>
<b>The Use of Criminal History Information in Higher Education... 10</b>	
<b>Legal Considerations .....</b>	<b>14</b>
<b>Promising Practices for Mitigating Barriers to Higher Education .....</b>	<b>18</b>
<b>Strategies for Ensuring Postsecondary Persistence and Completion for Admitted Students .....</b>	<b>29</b>
<b>Conclusion.....</b>	<b>37</b>
<b>Resources .....</b>	<b>40</b>
<b>Federal Resources .....</b>	<b>40</b>
<b>Nonfederal Resources .....</b>	<b>41</b>
<b>Appendix A: College and University Self-Assessment .....</b>	<b>42</b>
<b>Endnotes .....</b>	<b>44</b>



# Beyond the Box

Increasing Access to Higher Education for Justice-Involved Individuals

## Purpose of This Guide

Today, an estimated 70 million Americans have been involved with the criminal justice system. Data show plainly that people of color are more likely to come in contact with the justice system due, in part, to punitive school disciplinary policies that disproportionately impact certain student groups and racial profiling.<sup>1</sup> There is also growing recognition that successful reintegration back into our society for justice-involved individuals benefits those individuals, their families, and our communities. Research also shows that education can be a powerful pathway for justice-involved individuals to transition out of prison back into the classroom or the workforce, and cuts the likelihood of returning to prison within three years by over 40 percent.<sup>2</sup> With this context, it is critical to ensure that gateways to higher education, such as admissions practices, do not disproportionately disadvantage justice-involved individuals who have already served their time. **Criminal justice information (CJI)**, for instance, has been shown to deter potentially well-qualified applicants from applying for, and enrolling in, the postsecondary education and training that economists predict is critical to meaningful reentry and labor market success.<sup>3</sup> For purposes of this guide, criminal justice information includes information relating to juvenile arrests and adjudications as well as criminal arrests and convictions.

Postsecondary institutions work continuously through a variety of means to promote campus and classroom diversity and inclusivity; two characteristics known to enrich and improve the overall educational experience.<sup>4</sup> This work also includes designing fair and nondiscriminatory admissions processes. To assist colleges and universities in identifying and removing barriers that justice-involved individuals might face when applying for admission and unlocking the untapped potential of these students, the U.S. Department of Education (Department) has compiled this guide. This guide was developed with input from a diverse array of colleges and universities, stakeholders, and students, including formerly incarcerated students, and informed by research and promising practices.

A number of federal programs address the persistent barriers to successful reentry that justice-involved individuals experience. Efforts have ranged from providing guidance and coordinating federal funding streams to help those who have served their time obtain housing and higher education to enacting measures to ensure that more applicants, including those with prior criminal histories, receive a fair opportunity to compete for employment. Together, these actions are aimed at improving the overall outcomes for individuals who may have come in contact with the justice system by helping them get the education, support, and other opportunities they need to succeed in life, and to build strong and safe communities.

### **Who should read this guide?**

- College and university presidents, admissions personnel, enrollment management staff, academic deans, student services personnel, professors, and counselors
- Organizations that work with justice-involved individuals

### **What does this guide offer?**

- Data indicating that the consideration of criminal justice information during the admissions process could create unnecessary barriers to higher education for justice-involved individuals
- Recommendations for how to modify admissions policies and practices to support a more holistic review of applicants
- Resources on how to support justice-involved students after enrollment

## Student Spotlight

*I was attending a criminal justice conference with my teenage son at a mid-sized Ivy League school and I encouraged him to apply to the university. He brushed me off pointing out that he was not in the top 3 percent and would never get in. I wanted to show him that he should at least try so I applied myself.*

*I started the application process right away, but stopped in my tracks when I encountered the question: Have you ever been convicted of a crime? I thought to myself, "why apply?" They are just going to reject me. I felt like the goal I set to show my son it was worth trying was unrealistic...so I stopped my application.*

*Fortunately, I had shared what I was doing with my friends who insisted that I finish the application. I did, but did not reply in the way they were asking. They wanted to know about my crime, but I told them about my accomplishments since being home. I told them about the struggles of being a single mom and a victim of domestic violence. I told them about how I earned a 3.9 GPA at the small public college I was attending after a ten year hiatus from school. I told them about my work with my state senators and local assemblymen as an advocate for continued funding for low-income individuals to continue their pursuit of higher education.*

*Never in a million years did I ever think I was going to be accepted, but I received a call for a phone interview a few months later. I thought the interview was going well until the end, when I was asked about my criminal record. All hope was gone. I started crying and could not help but think my past was going to be held against me once again. I was not going to be able to get into the school because of something I already paid my penance for. He tried to reassure me that I was doing amazing advocacy and that they were very impressed by the work I was doing, but that they just would like to know what the crime was. I worked up the strength to talk about it. Once the call ended I cried for about two days just thinking about how I would always have to discuss my past and how it is always going to prevent me from becoming a different person.*

*A few weeks later I received an email from the school and almost didn't open it, thinking I knew what the answer was. To my surprise, I was accepted. I now know that the box doesn't always mean no, but the stress and anxiety that it caused was overwhelming and almost prevented me from applying.*

L. M., 41 years of age  
College Junior, Human Rights Major

## Background

### Criminal Justice Involvement in the U.S.

In the past 40 years, the number of Americans involved with the juvenile and criminal justice systems has grown dramatically. Prison populations have increased, as have the number of people arrested, on probation, and on parole. Today, an estimated 70 million Americans have an arrest or a conviction that may show up in a criminal background check.<sup>5</sup>

Criminal justice involvement and a criminal history can become a barrier to individuals long after they have paid their debt to society. Despite their hopes of moving beyond their pasts and establishing new lives, the growing number of Americans with criminal records are often required to check a box on their college or university application if they have ever been involved with the criminal justice system — and this CJI often influences who applies to, and eventually, who is accepted to and enrolled in higher education.

The CJI requested varies in specificity from one institution to the next. Notably, some of the country's largest colleges and universities do not inquire about criminal history, and many community colleges likewise have open enrollment policies and do not ask individuals to check a box or disclose any criminal justice involvement. Some colleges and universities have applications that appropriately limit the CJI requested, the timing of when CJI is requested, how it is requested, and/or when and how such information is reviewed by trained personnel. Other postsecondary institutions, however, have imprecise wording on their applications, which prevents admissions personnel from knowing if, for example, "criminal justice involvement" means imprisonment for felony sexual abuse, or an arrest of a juvenile for a minor offense that never resulted in a conviction.

#### **A staggering growth in criminal justice involvement**

- Today, the U.S. prison population is the largest in the world.
- The U.S. accounts for less than 5 percent of the world's population, but nearly 25 percent of its inmates.<sup>6</sup>
- From 1973 to 2014, the average state and federal prison population in the United States rose steadily from about 200,000 to slightly over 1.5 million.<sup>7</sup>
- Local jails hold another 700,000 people, bringing the total number of inmates across the country to approximately 2.2 million.<sup>8</sup>

- Annually, over 600,000 people leave state and federal prisons and re-enter society.<sup>9</sup>
- In 2014 alone, 11.4 million people were admitted to local jails and the average stay was 23 days.<sup>10</sup>

### **Disproportionality in criminal justice involvement**

More often than not, the admissions process is one of the many barriers that justice-involved people face, particularly people of color, who are disproportionately represented in our nation's justice system. According to the U.S. Sentencing Commission, "demographic characteristics are now more strongly correlated with sentencing outcomes than during previous periods."<sup>11</sup> The literature suggests that minority defendants are treated differently at several stages of the criminal justice process and those differences influence resulting disparities.<sup>12</sup>

### **It's worth considering...**

Many colleges and universities ask prospective students to share their school disciplinary history to identify potential threats to campus safety or past academic dishonesty. However, various sources, including the Civil Rights Data Collection, show vast disparities in the use of suspensions and expulsions to address student behavior in elementary and secondary schools. Overly punitive school discipline policies can have negative collateral consequences, such as disproportionate contact with law enforcement and the justice system.<sup>13</sup>

Data from the 2011-2012 Civil Rights Data Collection maintained by the U.S. Department of Education's Office for Civil Rights (OCR) show that black students are suspended and expelled at a rate three times greater than white students and often for the same types of infractions. While black students represent 16 percent of student enrollment, they represent 27 percent of students referred to law enforcement and 31 percent of students subjected to a school-related arrest.

Notably, school-based infractions leading to justice involvement are not restricted to violent or dangerous behaviors but often also involve minor infractions.<sup>14</sup> One 2011 study showed that only 3 percent of disciplinary actions taken in one state were for state law-mandated suspensions and expulsions; the rest were at the discretion of school officials.<sup>15</sup>

As a result of these data, the U.S. Departments of Education and Justice issued a Dear Colleague Letter explaining how public elementary and secondary schools can meet their legal obligations to administer student discipline without discriminating on the basis of race, color or national origin.<sup>16</sup>

Colleges and universities using disciplinary history as admissions criteria should consider how to design admissions policies that do not have the unjustified effect of discriminating against individuals on the basis of race, color, national origin, sex, religion, and disability. An estimated three out of four colleges and universities collect high school disciplinary information, and 89 percent of those institutions use the information to make admissions decisions.<sup>17</sup> A Texas statewide study found the vast majority of discretionary suspensions, however, are for violations of the school code of conduct or minor offenses, indicating that the use of disciplinary history in admissions may not serve the goal of improved campus safety.<sup>18</sup>

Racial and ethnic disparities exist in the adult criminal justice system as well. Of those behind bars in state and federal institutions in 2011, about 60 percent were minorities.<sup>19</sup> Black men born since the late 1960s are more likely to have served time in prison than to have completed a four-year college degree.<sup>20</sup>

Colleges and universities should also consider our improved understanding of the developmental process through young adulthood. Recent behavior and neuroscience research shows that young adults are developmentally distinct from older adults and the brain's capacity for mature decision-making continues to evolve well beyond the teenage years.<sup>21</sup> Because collateral consequences of justice involvement are particularly severe for young adults, institutions of higher education can assist young people who may have gotten off track in their younger years with their transition to productive adult lives. Colleges and universities that give justice-involved youth opportunities to earn a postsecondary degree or training certificate can help reduce unnecessary and overly broad collateral consequences of a criminal record, and contribute to more positive outcomes for young people and their communities.

Overall, the enormous increase in the number of people who have come into contact with the criminal justice system means that millions of Americans, disproportionately racial and ethnic minorities, currently face significant and potentially long-lasting access barriers to housing, employment, and higher education.<sup>22</sup>

### **Plea Deals and Collateral Consequences**

A plea bargain is an agreement in a criminal case between the prosecution and the defendant whereby the defendant agrees to plead guilty to a particular charge in return for some leniency or concession from the prosecutor. There are no recent precise estimates, but scholars estimate that between 90 and 95 percent of both state and federal cases are resolved through plea bargains.<sup>23</sup>

An individual may accept a plea deal to reduce, avoid or end a jail or prison sentence, unaware of the collateral consequences of a guilty plea. While plea deals may not result in prison or jail time, they often result in a criminal conviction or a criminal record, which likely show up on a background check and may impact an individual's admission into college.<sup>24</sup>

## The Vital Importance of Campus Safety

This guide highlights promising admissions practices and policies that help increase the inclusion of and educational opportunities for criminal justice-involved individuals. This guide also acknowledges an issue that is vitally important to schools, families, and students: campus safety. The Department is committed to helping schools provide students nationwide with a safe learning environment and to keeping students, parents, and personnel well informed about campus security.

In 1990, Congress enacted the *Crime Awareness and Campus Security Act of 1990 (Title II of Public Law 101-542)*, which amended the *Higher Education Act of 1965 (HEA)*. In 1998, the law was amended and renamed the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* (the *Clery Act*). The *Clery Act* requires all postsecondary institutions participating in *Title IV* student financial assistance programs to disclose campus crime statistics and security information. It is important to note that nothing in this guide impacts the obligations of postsecondary institutions to comply with the *Clery Act*.<sup>25</sup>

## The Use of Criminal History Information in Higher Education

### **Asking the Question: Criminal History**

College applications are tailored to the specific demands and requirements of the postsecondary institution. Nearly 700 colleges and universities use the Common Application, an undergraduate college admission application, which in 2006 began requiring students to indicate if they have been “adjudicated guilty or convicted of a misdemeanor, felony or other crime.” Some colleges and universities that use the Common Application opt to make answering the question about criminal justice involvement optional or elect to review CJI only after a preliminary admissions decision has been made.

Other schools choose to use their own application as part of the admissions process and the question of an individual’s criminal history is handled in many different ways. Here are a few examples:

- As part of the review of a candidate’s academic qualifications, a large Midwestern land-grant public university asks if an individual has been convicted of a felony or has felony charges pending against him or her;
- A midsized private university in Colorado asks if applicants have ever been convicted of a misdemeanor, felony, or other crime;
- One of Alabama’s large public universities includes a criminal justice question asking prospective students if they have ever received a written or oral warning not to trespass on public or private property; and
- An east coast historically black university requires an applicant to indicate if he or she has ever been arrested. In addition, this institution asks prospective students if they have been convicted of any crime (other than traffic violations) or been sentenced to a correctional or penal institution.

A survey of postsecondary institutions found that 66 percent of them collect CJI for all prospective students, and another 5 percent request CJI only for some students. The 5 percent of institutions requesting CJI for a subset of students were doing so to gather information from applicants for programs that appeared to be closed to individuals with criminal records.<sup>26</sup>

## Potential Pitfalls with Background Checks

A 2006 U.S. Department of Justice report on criminal background checks indicated that there is no single source for complete and up-to-date information about a person's criminal history.<sup>27</sup> A 2015 Government Accountability Office (GAO) report acknowledged that while the completeness of criminal history records used for background checks has improved, there are still gaps.<sup>28</sup>

The Federal Bureau of Investigation (FBI) maintains a criminal history record repository, known as the Interstate Identification Index (III or "Triple I") system that contains records from all states and territories, as well as from federal and international criminal justice agencies. In 2006, approximately 50 percent of the records in the FBI's criminal history record repository were missing information about the resolution of criminal cases, including dismissals and acquittals. Yet the number of states that reported providing the FBI more than 75 percent of their arrest records with final dispositions increased from 16 states in 2006 to 20 states in 2012. Nonetheless, in 2012, 10 states reported that 50 percent or less of their arrest records had final dispositions.<sup>29</sup>

The FBI is not the only source for criminal history information. Private sector or third-party entities provide professional background screening services and/or commercial databases that aggregate criminal records that are available to the public from government agencies. Yet, these commercial databases are not always accurate because:

1. Not all states, and not all agencies within individual states, make their records available to such databases;
2. The FBI does not make its federal or state criminal records available to such databases;
3. The information is updated periodically and thus might not capture the expungement or sealing of records in a timely fashion; and
4. Private companies generally conduct name-based background checks (as opposed to fingerprint-based background checks), which can decrease the accuracy of the information that the background check produces.<sup>30</sup>

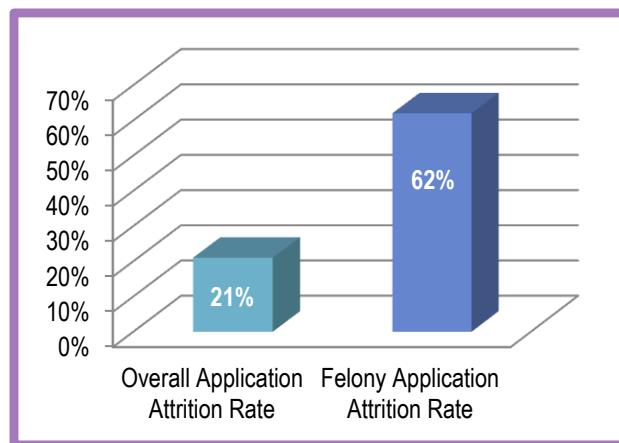
The Federal Trade Commission and the Consumer Financial Protection Bureau investigate the actions of private background companies that violate the Fair Credit Reporting Act, which is intended to promote the accuracy, fairness, and privacy of information in the files of consumer reporting agencies.<sup>31</sup>

One of the primary reasons offered for collecting CJI is safety.<sup>32</sup> Because very few students who attend college report prior felony convictions on their admissions applications (and notably, most such reports related to offenses such as possession or use of marijuana), there is limited data and research exploring any potential connection between criminal justice history and campus safety. However, to the extent research exists on the issue, there are no conclusive research findings to suggest that asking about an individual's criminal justice history during the admissions process decreases campus crime.<sup>33</sup>

While the reasons for collecting CJI vary by institution — including concerns about safety and occupational licensing barriers that formerly incarcerated students might face upon graduation — there is consistency in the extent to which disparities in the justice system disproportionately impact individuals of color, especially black males, and, in turn, disproportionately require students of color to respond to questions about CJI. Additionally, questions about criminal history create a significant risk of alienating potential applicants while also unnecessarily limiting an institution's applicant pool.

A 2015 Center for Community Alternatives study suggests that of the 2,924 individuals with felony convictions who started applications for admission to State University of New York schools, two thirds of the individuals never complete the application process due in part to the onerous process of providing supplemental information about their convictions.<sup>34</sup> In comparison, the attrition rate on applications for all applicants is only 21 percent.

**Figure 1: State University of New York Attrition Rates for Applicants With a Felony Conviction and for All Applicants**



Source: *Boxed Out: Criminal History Screening and College Application Attrition*, Center for Community Alternatives, 2015.

## Legal Considerations

It is important for colleges and universities to be aware of relevant legal standards governing questions they ask on admissions applications and in adopting student selection criteria they use in admissions processes. It is advisable to confer with counsel about the legal issues involved in collecting and using CJI in an admissions process.

Federal laws, and many state laws, prohibit discrimination on the basis of race, color, national origin, religion, disability, and often sex in postsecondary institution admissions. Under *Title VI of the Civil Rights Act of 1964* (*Title VI*) and its implementing regulations, recipients of federal financial assistance (including most public and private postsecondary institutions in the United States) are prohibited from discriminating on the basis of race, color, and national origin. This means that they must not intentionally discriminate and they must not implement policies that, while neutral on their face, have the unjustified effect of discriminating against individuals on the basis of race, color, or national origin (often referred to as *disparate impact*).<sup>35, 36</sup>

Three federal agencies have assessed the use of CJI in the contexts of housing and employment under a disparate impact standard of similar federal civil rights laws.

The **U.S. Equal Employment Opportunity Commission (EEOC)** has stated that “[n]ational data supports a finding that criminal record exclusions have a disparate impact based on race and national origin” and thus provides a basis for which EEOC can investigate disparate impact charges challenging the use of criminal histories as a violation of *Title VII of the Civil Rights Act of 1964* (*Title VII*), which prohibits discrimination in employment.

EEOC explains that a “policy or practice requiring an automatic, across-the-board exclusion from all employment opportunities because of any criminal conduct” would likely lead it to find reasonable cause to believe there was a violation of *Title VII*. This is because the policy or practice “does not focus on the dangers of particular crimes and the risks in particular positions.” As a “best practice,” EEOC “recommends that employers not ask about convictions on job applications.” EEOC’s guidance also notes that several state laws require that employers “wait until late in the selection process to ask about convictions,” based on the rationale that “an employer is more likely to objectively assess the relevance of an applicant’s conviction if it becomes

known when the employer is already knowledgeable about the applicant's qualifications and experience."

Although EEOC explains that *Title VII* "does not necessarily require individualized assessment in all circumstances," adopting a system where "an employer informs the individual that he may be excluded because of past criminal conduct provides an opportunity to the individual to demonstrate that the exclusion does not properly apply to him; and considers whether the individual's additional information shows that the policy as applied is not job related and consistent with business necessity" can "help employers avoid Title VII liability by allowing them to consider more complete information on individual applicants or employees."<sup>37</sup>

The **U.S. Department of Labor (DOL)** has likewise cautioned, in interpreting *Title VI* as well as *Title VII* and other federal laws, that "policies and practices that exclude workers with criminal records may run afoul of such laws."

In particular, DOL notes that "[p]olicies that exclude people from employment or other services based on the mere existence of a criminal history record and that do not take into account the age and nature of an offense, for example, are likely to unjustifiably restrict the employment opportunities of individuals with conviction histories and, due to racial and ethnic disparities in the criminal justice system, are likely to violate federal antidiscrimination law." Accordingly, DOL recommends that employers "should carefully consider their legal obligations before adopting such policies."<sup>38</sup>

DOL has specifically made clear that these legal principles apply if federal contractors and subcontractors use criminal records to screen out applicants. Under Executive Order 11246, as amended, federal contractors may be subject to sanctions, up to and including debarment from future contracts, if they refuse to remedy employment discrimination based on race, national origin, sex, or other protected category found by DOL.<sup>39</sup>

Most recently, the **U.S. Department of Housing and Urban Development (HUD)** explained that "criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers" and may violate the *Fair Housing Act*. Although housing providers may consider criminal record screening to be necessary to ensure resident safety and protect

property, HUD cautions that “a housing provider who denies housing to persons on the basis of arrests not resulting in conviction cannot prove that the exclusion actually assists in protecting resident safety and/or property” because “the fact of an arrest is not a reliable basis upon which to assess the potential risk” posed by a particular individual.

Likewise, according to HUD, a “housing provider that imposes a blanket prohibition on any person with any conviction record — no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then — will be unable to meet” its burden to show that such a policy is necessary to serve a substantial, legitimate, nondiscriminatory interest.

HUD also explains that a housing provider should adopt a “tailored policy or practice” that “accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.” And even then, housing providers may be able to achieve these interests through an “individualized assessment of relevant mitigating information beyond that contained in an individual’s criminal record,” which HUD states “is likely to have a less discriminatory effect than categorical exclusions that do not take such additional information into account.”<sup>40</sup>

Although these federal guidances address the use of CJI in other contexts, they may be useful by reference in determining whether to include, and if so, how to design any CJI-related questions for an institution’s admissions application.

## Understanding Disparate Impact<sup>41</sup>

A statistical racial disparity does not, by itself, violate Title VI. But disparities can trigger further investigation to determine whether the disparity is justified. The Department, like most federal agencies, considers a three-step analysis.

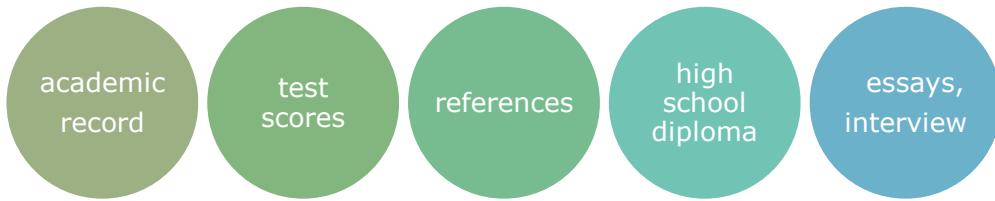
- **Does the institution have a policy or practice that produces an adverse impact on applicants of a particular race, color, or national origin when compared to other applicants?**
  - If no, then no unlawful disparate impact discrimination
  - If yes, then move to next step
- **Can the institution demonstrate that the policy or practice is necessary to meet an important educational goal?** In conducting this step, the Department would likely consider both the importance of the educational goal, and the tightness of the fit between the goal and the policy or practice employed to achieve it.
  - If no, then likely finding of unlawful disparate impact discrimination
  - If yes, then move to next step
- **Are there comparably effective alternative policies or practices that would meet the institution's stated educational goal with less of a discriminatory effect on the disproportionately affected racial group?**
  - If yes, then likely finding of unlawful disparate impact discrimination
  - If no, then likely no unlawful disparate impact discrimination

## Promising Practices for Mitigating Barriers to Higher Education

In light of the relevant data on disproportionate minority contact with the criminal justice system, and the relevant legal considerations outlined above, institutions should assess and consider whether use of CJI furthers institutional goals of creating safe, inclusive, and diverse campus communities. To the extent CJI is used, postsecondary institutions should consider a multistep approach to mitigate barriers to higher education associated with inquiring about CJI on college applications and conducting background checks. The Department has collected several promising practices from colleges and universities around the nation and outlines these practices here for consideration by other postsecondary institutions.

- 
- If your college or university currently collects criminal justice information, determine whether this information is necessary to make an informed admission decision and whether it would be appropriate to remove these questions from the application.*
- 

While CJI may provide a snapshot in time, a diverse set of assessment tools provides admissions personnel with a more complete measure of an applicant's potential for success and potential contributions to the higher education community:



Generally, postsecondary institutions might find that an applicant is a prime candidate for postsecondary success if (1) his or her record demonstrates a willingness to take challenging courses and excel; (2) teachers and mentors can provide strong recommendations based on first-hand knowledge of the applicant's defining characteristics; and (3) the applicant's extracurricular activities indicate a passion for something outside of the classroom. Essays and interviews also allow an institution to gain insight into an applicant's qualifications and character. Together these myriad factors could be enough

to allow for an informed admissions decision without asking about interactions with the criminal justice system, which may have an undue prejudicial impact on the decision-maker. But ultimately, colleges and universities should weigh their admission criteria against their institution's mission.

### Promising Practice in Action

Some of the country's largest colleges and universities have already adopted the practice of not inquiring about criminal history. Many community colleges have open enrollment policies and do not ask individuals to check a box or disclose their criminal justice involvement. The California and Texas public colleges and universities, and Arizona State University system, set a goal to become and remain accessible for all qualified students. They believe inquiring about school disciplinary or criminal history would be counter to this mission. When a student's history is otherwise revealed during the application process, such as in a recommendation letter or counselor's report, a student is given a chance to provide relevant context for the information before it affects their acceptance.

### Promising Practice in Action

New York University (NYU) is one of several hundred colleges and universities that use the Common Application for undergraduate admissions. Last year, NYU decided to change its application review procedures and initially review all undergraduate applications without knowledge of whether the applicant has affirmatively answered the question of whether he or she has been convicted of a crime. Once the initial assessment of admission is made, the applications of individuals who checked the criminal conviction box are reviewed by a special committee made up of a team of admissions professionals who have been specially trained to perform an assessment of the information based on a multi-factor analysis to determine whether a past criminal offense justifies denial of admission.

NYU also recently urged The Common Application to consider reviewing the value of the continued presence of the CJI question.<sup>42</sup>

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- 
- If it is necessary to inquire about criminal history, colleges and universities should delay the request for or consideration of CJI collected until after an admission decision has been made to avoid a chilling effect on potential applicants whose CJI may ultimately be deemed irrelevant by the institution.*
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- 

Delaying or removing consideration of CJI is a growing trend in employment across the public sector at the local, state, and federal level, as well as in the private sector. Over 100 U.S. cities and counties have adopted fair-chance-hiring practices and policies to reduce barriers of employment for people with criminal histories. Furthermore, 25 cities and counties extend the fair-chance policies to government contractors or private employers.<sup>43</sup> Currently, 23 states have developed policies removing questions about criminal history, past criminal justice involvement, or convictions from their employment applications or are delaying such inquiries until later in the hiring process.<sup>44</sup> Additionally, in April 2016, after President Obama directed<sup>45</sup> the Office of Personnel Management (OPM) to delay inquiries into criminal history during the hiring process for federal employees, OPM published a proposed rule that delays such inquiries until a conditional offer of employment is made.<sup>46</sup> As previously mentioned, EEOC endorsed removing the criminal history question from job applications as a best practice in its 2012 guidance, and made clear that certain employment practices on the use of criminal histories could violate federal civil rights laws.<sup>47</sup> The private sector has also embraced fair-chance-hiring policies, and 112 companies from across the American economy signed on to the White House Fair Chance Business Pledge,<sup>48</sup> which calls on businesses to make commitments to achieve the goals of promoting opportunity for all, eliminating barriers to reentry, and providing meaningful opportunities to succeed for reentering individuals.<sup>49</sup>

Similarly, many of the promising practices for considering CJI in the employment sector, including the practice of delaying the request for information, could be adopted for admissions purposes. Requesting and considering CJI early in the admissions process can prevent some qualified applicants from ever applying and overshadow individual merit and achievement with historical information that may be irrelevant to the student's prospect for success on campus and likely contributions to the campus community.

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*If it is necessary to inquire about criminal history, colleges and universities should do so transparently and clearly inform potential students as early as possible in the application process how to respond to the inquiry.*

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If colleges and universities do inquire about the criminal history of applicants, they should endeavor to make the process as transparent as possible. Prospective students should be informed early in the process about the school's admissions policy with respect to criminal justice involvement. Students may become discouraged if they are confronted with unanticipated roadblocks to admission. Students denied admission due to their criminal record should also be informed of the reason for the denial, especially in light of the fact that criminal background checks often include inaccurate or out-of-date information.<sup>50</sup> Colleges and universities should give applicants the right to appeal a denial based on their criminal record, and the appellate process should be designed so that applicants are encouraged to pursue admission, instead of being discouraged from continuing to apply.<sup>51</sup>

#### **It's worth considering...**

EEOC has advised employers to perform an "individualized assessment" for applicants who are excluded as a result of the conviction inquiry. An individualized assessment means that

1. The applicant is notified that he or she has been screened out because of a criminal conviction;
2. The applicant is given an opportunity to demonstrate that the exclusion should not be applied due to his or her particular circumstances; and
3. The employer should consider whether the additional information provided by the applicant warrants an exception to the exclusion and shows that the policy as applied is not job-related and/or consistent with business necessity.

**If a student is excluded based on his or her CJI, institutions should employ similar practices, creating a formal appeals process for applicants affected by the initial exclusion.**



*If inquiring about criminal history, institutions should ensure the questions are specific and narrowly focused.*

Like many employers, postsecondary institutions are often concerned with potential liability for neglecting to identify a potential threat to safety. While campus safety is a paramount concern, in some cases indiscriminate use of CJI may result in a broad chilling effect or overbroad exclusion of students. By using carefully tailored and specific questions, institutions can avoid overbroad exclusions. Emerging practices from institutions across the country and many of the principles outlined in the EEOC guidance to employers could be similarly applied to postsecondary institutions as they consider CJI during the admissions process. Some of these principles are outlined below.

### **1. Avoid the use of ambiguous criminal justice terms.**

When seeking CJI, colleges and universities should clearly define what information is required. Using ambiguous language can widen the net for what potential applicants must disclose. For example, a midsized private university in Texas asks students if they have ever been convicted of a misdemeanor, felony, or other crime. The absence of a clear definition of “other crime” makes the question ambiguous and creates an indiscriminate catch-all category for potential applicants.

### **2. Clearly define what information should *not* be disclosed.**

It is a best practice to specify what is not required to be disclosed, such as information that may beyond the scope of the question, including, in some cases, information regarding juvenile adjudications, or information contained in records that may have been sealed or expunged. Here is an example:

**Question:** Have you been convicted of or pled guilty to a felony in the past 5 years?

**Explanation:** A “felony” is defined differently from state to state, but can generally be described as a more serious offense carrying a potential punishment ranging from more than one year in prison to life without parole or even death. “Convicted” means a judge or jury has

found you guilty of the crime(s) charged against you in a court of law, following a trial or guilty plea. If you have been adjudicated as a juvenile delinquent or have youthful offender status, you should respond to the felony question by checking “no.” You should also answer “no” if your conviction has been sealed, expunged, or overturned, if you were arrested, but not convicted, or if your felony conviction was over 5 years ago.

### **3. Avoid overly broad requests about criminal history.**

It is also a best practice to identify the criminal conviction(s) on which it is absolutely necessary to base an admissions decision, or to focus any inquiry as narrowly as possible. Thus, rather than asking the generic question, “Have you ever been convicted of a crime?” it is recommended that institutions be as specific as possible. For inquiries aimed at gathering information related to a specific crime, for example, crimes involving dishonesty or sexual violence, institutions should consider tailoring the specific questions asked to focus on that particular crime. Taking the time to determine whether and why the information is needed will assist in developing what specific questions to ask.

### **4. Include a time limit on criminal background data.**

Empirical evidence suggests that there is a relationship between age and criminal desistance (the cessation of offending activity among those who have offended in the past). While there is great variability in when individuals desist from crime, eventually, the vast majority of criminals do so.<sup>52</sup> Additionally, research has shown that if an individual with a criminal record remains crime-free for a period of about seven years, their risk of committing a new offense is similar to that of a person without any criminal record.<sup>53</sup>

As such, postsecondary institutions should institute time limits for CJI inquiries, such as within the last five to seven years. In some cases, it may be useful to base the designated period on the type of offense (for example, violent or nonviolent). Limiting the scope of CJI inquiries acknowledges the likelihood that those who have successfully transitioned out of the justice system and have not recidivated pose lower risks, and have the potential to thrive in an academic setting. Institutions should be sure to balance the value added in obtaining CJI with the significant

impact of potentially deterring an otherwise qualified student from applying for postsecondary education.

**5. Inquire about convictions, not arrests.**

Postsecondary institutions should ensure questions inquiring about criminal history are focused on convictions, and not arrests. EEOC guidance asserts that an arrest alone is not sufficient to establish that someone was engaged in criminal activity, whereas a conviction is sufficient proof of guilt.<sup>54</sup> However, an employer may exclude someone from employment based on the description of the underlying conduct, not the fact of the arrest, if the conduct is relevant to the particular job at issue and makes the individual unable to satisfactorily perform the work for the position in question. Similarly, postsecondary institutions may consider whether the conduct underlying an arrest, such as sexual violence, is an appropriate consideration in the admissions process. However, in doing so, it is important to be mindful of how and when such information is requested, the manner in which the information is requested, the criteria by which such information is analyzed by trained personnel, and the disparate impact this policy could have on certain populations.

**6. Tailor questions about CJI to avoid unnecessarily precluding applicants from entering training programs, and thus employment, for which they might be eligible.**

For career-oriented training programs, institutions should limit CJI inquiries to criminal convictions that pose barriers to certification and licensing. For example, if a state teacher's board will not grant a license to anyone with a felony conviction for sexual assault or rape, the teaching program could specifically ask, "Have you ever been convicted of felony sexual assault or rape?" instead of broadly asking, "Have you ever been convicted of a crime?" This specificity would enable the institution to adequately assess whether a student could face occupational licensing and credentialing barriers.

Barriers to reentry often vary from state to state, and are in the process of evolving. The Department of Justice's National Institute of Justice funded a **National Inventory of the Collateral Consequences of Conviction**, which may help institutions evaluate whether barriers exist and should be considered during the admissions process.<sup>55</sup> Institutions should consider both national trends and their state's barriers when determining whether or what, if any, questions should be asked regarding criminal history. Additionally, institutions should remain informed about these restrictions as they may change over time in order to appropriately account for such changes in their admissions processes and guide students to professions where they can succeed.

It is important to note that many professions have discretion to allow students to pursue career fields despite a history of CJI. Rather than acting as a gatekeeper by prohibiting applicants from the program, institutions should advise students who wish to enter their programs of these potential barriers and direct them to information on the potential barriers where available, such as to a state licensing board. In the end, the student, not the institution, should decide whether he or she wishes to pursue an education in a particular field.

### Did You Know...

Although there might be statutory or legal barriers to individuals with certain criminal convictions receiving occupational licensing or certifications, some states have processes in place to mitigate these barriers. For example, the State of New York allows people with felony convictions who wish to obtain professional licenses to obtain either a Certificate of Relief or a Certificate of Good Conduct.<sup>56</sup> These certificates allow them to sit for licensing exams, but applicants may still be required to go before special review boards. The District of Columbia and the following states have similar laws that offer means of removing occupational and employment barriers: Arkansas, Connecticut, Georgia, Illinois, North Carolina, Ohio, Rhode Island, Tennessee and Vermont. It is also of note that sometimes education or a degree is seen as evidence of rehabilitation, eliminating barriers.<sup>57</sup>



*Give all prospective students the opportunity to explain criminal justice involvement and preparedness for postsecondary study.*

There are a myriad of reasons why an individual might have a prior criminal conviction. Convictions may result from an individual's decision to forego a trial and plead guilty to a crime in order to avoid or reduce jail or prison time; a school-based infraction that led to involvement in the justice system; or an impulsive decision at a young age. Regardless of the reason, the individual has paid his or her proverbial "debt to society." Furthermore, as previously mentioned, criminal background checks could return inaccurate information about an individual's justice involvement. Colleges and universities that inquire about CJI should create a space on their application for admission to allow prospective students to explain their circumstances, and how they can positively contribute to the school community. For example, evidence of rehabilitation, community service, or persistence in higher education, whether while incarcerated or post-release, can be a strong indication that an individual is well positioned to positively contribute to a school community.

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- Provide admissions personnel and counselors training on the effective use of criminal history data.*
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Since multiple factors may feed into qualifying for admission, it is important to understand how to appropriately use CJI when considering an applicant. Properly trained admissions personnel are a critical resource for those institutions using CJI in their admission processes. Effective training for admissions personnel often includes not only a keen understanding of how to use CJI and the potential problems associated with it, but also the types of supporting documents to obtain, as well as how to ensure that privacy protections are put in place.

In addition to understanding whether an applicant's criminal justice involvement is relevant to his or her admission into college, admissions personnel and enrollment management staff should also be trained on what information is necessary and realistic to request when an applicant admits to having a criminal history. Admissions policies sometimes require prospective students to obtain burdensome paperwork – such as letters from corrections, probation, and parole officials – documentation that these officials will not or cannot provide based on existing policies.<sup>58</sup> Given possible challenges with accessing documentation of justice-involvement, counselors should consider requesting alternative evidence of reintegration and rehabilitation, such as character reference letters from people who are aware of the crimes, can attest to the applicant's character, and can be available to discuss the candidate.

Admissions offices that use background checks should also make sure to use reputable services that provide accurate, up-to-date information. As previously stated, criminal history information is often inaccurate and should not be relied on without verification.

Finally, admissions personnel should ensure that knowledge of a student's CJI is only provided to those individuals who need to know. Privacy is understandably a major concern for justice-involved students. In some states, students' criminal history records include information that cannot be disclosed to the public due to expungement or the sealing of a record.<sup>59</sup> In the course of researching and writing this report, numerous roundtable discussions with justice-involved students revealed stories of both denied and admitted students who had heard through the proverbial "grapevine" that

someone outside of the admissions committee became aware of their criminal justice history.

Perhaps the most powerful tool an admissions counselor or officer can have is the ability to use his or her own human experience in assessing the person behind the paper. Institutions should seek to create an admissions process that respects human dignity and is fair and equitable by design.

## Strategies for Ensuring Postsecondary Persistence and Completion for Admitted Students

Even after being admitted into college, students who may have been previously involved in the justice system — like many underrepresented and vulnerable groups of students — need support to persist in and successfully complete higher education.

While removing barriers that justice-involved individuals face as a result of higher education admission policies and processes can lead to improved lives and educational outcomes, it is important to continue building a positive and supportive culture beyond the admissions process. It is also important to highlight that getting into college is only the beginning, and failing to complete a degree can result in negative outcomes. Low college persistence and completion rates across all populations can have significant opportunity costs. Many students who attend college, but do not complete their degree or training program, are at risk of incurring additional debt — with no wage-increasing credential to make up for the investment.<sup>60</sup>

Varied levels of academic preparation, feelings of isolation, and insufficient social and personal supports all play a role in student performance and persistence in higher education. Providing well-designed comprehensive supports may improve the odds of a student persisting in college.

### Promising Practice in Action: University of California, Berkeley's Underground Scholars

The Underground Scholars Initiative (USI) was created to support all prospective and current University of California, Berkeley (UC Berkeley) students impacted by over incarceration, imprisonment, and detainment. The goal of USI is to bridge the topic of over incarceration, which is highly popularized in academia, with one that is grounded in the lived experiences of UC Berkeley students. USI helps previously and/or currently incarcerated individuals transition into the culture of the campus by providing them with peer counseling, scholarship information, and other resources; establishing advocates in the campus community on behalf of previously or currently incarcerated individuals, especially those who are already attending, or may soon attend, UC Berkeley; building networks with other university organizations in order to mitigate the effects of incarceration, especially those that create social and logistical obstacles that can interfere with acquiring an education at UC Berkeley; and helping students and their families find alternatives to incarceration with the empowering effects of higher education.<sup>61</sup>

Postsecondary institutions should consider enacting measures to help support students who identify as having been involved with the justice system. The examples below have been effective at various schools, but program administrators will want to consider their specific needs when deciding what measures to implement.



*Provide well-informed academic and career guidance.*

Institutions should be sure to offer targeted academic and career guidance to all students, including students with past justice involvement. It is important to be mindful that not all students entering a college or university know their intended course of study or career goals. When advising students with previous criminal justice involvement, it is important to inform them of possible employment barriers. These students should not be discouraged from pursuing their chosen path but instead encouraged to reach out to state or local licensing boards to see if there are waivers or certificates of relief or rehabilitation that would make them eligible to obtain a license in their chosen field. If obtaining such a certificate is not possible, advisors and

counselors should support students to identifying and pursuing an alternate academic or career pathway.

Advisors and counselors may also help students determine if there will be barriers to obtaining required clinical hours or practicums in fields such as health and social services, and what support the postsecondary institution may provide in helping students find placements that fulfill work-based learning requirements.

### **Promising Practice in Action: Rutgers University Mountainview Communities**

The Rutgers University Mountainview Program (RUMVP) attempts to identify and recruit the most accomplished students from the community college programs within New Jersey's adult and youth correctional facilities as the end of an in-prison educational pipeline known as NJ-STEP. The program began with one student in 2005. Since then, the program continues to grow and now includes male and female students from facilities throughout the state.

Once recruited and admitted, the program offers ongoing support and guidance in earning a baccalaureate degree (or beyond) while managing the reentry process. In addition to support through the college admissions process, RUMVP assists after enrollment with navigating financial aid, managing personal finances, course selection, and access to direct academic supports such as tutoring and coaching. RUMVP partners with NJ State Parole, the Office of Student Employment and various external agencies to find suitable housing and part time employment for students. A key aspect of RUMVP is its close work with each student to assist in major selection, career attainment, securing networking and internship opportunities and preparing to enter the workforce or graduate study upon graduation.

RUMVP's program has yielded significant success for its students, most recently including two program participants being awarded the prestigious Harry S. Truman Scholarship.<sup>62</sup>

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- Inform students of available support services.*
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We recommend providing access to a range of supports, such as counseling and even legal aid services, to increase a student's chances of success in postsecondary and the labor market. An important first step in ensuring student success, however, is informing students about the resources available to them. Pre- and post-enrollment information and recruitment sessions allow students who self-identify as justice-involved to learn about accessing these services to help them achieve their educational and career goals.

#### **Promising Practice in Action: Cuyahoga Community College's Office of Legal Services**

Cuyahoga Community College, located in Cleveland, Ohio, has an Office of Legal Services designed to eliminate barriers to success both inside and outside of the classroom. This office provides numerous legal aid functions, provides limited advice about legal matters, and also acts to refer students to other organizations that can assist with other issues that may arise.

Cuyahoga's Office of Legal Services assists students who have criminal records with the sealing and expungement process, including representation in court, and will work with students to obtain certifications of qualification for employment, to assist students in the job application process.<sup>63</sup>

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- Recruit peer mentors and college coaches to work with justice-involved students.*
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Mentoring and coaching justice-involved individuals can be a particularly effective strategy to ensure postsecondary success. Institutions should recruit and train peer mentors with previous justice involvement to work with justice-involved students to ensure a smooth transition to postsecondary education and provide support and resources throughout their time at the

college or university. These peer mentors could begin their work by acting as navigators who help acclimate justice-involved students to the educational institutions.<sup>64</sup> Mentoring students once they are in college has also been shown to increase persistence and completion. A pair of economists studied the impact of college coaching provided through colleges by InsideTrack, an independent company that provides one-on-one student coaching, and found that even two years after the intervention, retention was up 14 percent. Student coaching also increased graduation rates by 4 percentage points, from 31 percent to 35 percent.<sup>65</sup>



*Support student groups for justice-involved youths and adults.*

College and university personnel could establish or assist the creation of affinity groups, such as student clubs and organizations, to support individuals involved with the criminal justice system.

Campus support services, such as TRIO offices, are already in place and accustomed to working with groups from disadvantaged backgrounds such as first-generation students and low-income students that may overlap with justice-involved individuals.

#### **Promising Practice in Action: San Francisco State University's (SFSU's) Project Rebound**

Project Rebound's mission is to support formerly incarcerated individuals on their journey through successful reintegration in a college setting. Project Rebound offers special admission to SFSU for parolees or probationers who might not normally qualify for university acceptance because of application deadlines or academic requirements.

Project Rebound offers support and counseling services for those in prison, inspiring them to make college a goal and tutoring them in the admissions process and in how apply for financial aid. It also provides mentoring services for justice-involved students and serves as a liaison with campus services and community organizations in order to help students with their basic needs.<sup>66</sup>

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- Provide justice-involved students access to meaningful work opportunities.
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Research suggests that work experience combined with academic and technical training, as well as job search and placement assistance and other supports, have a positive impact on the employment and earnings of youths and young adults.<sup>67</sup> Employment has been shown to help formerly incarcerated individuals during the reentry process by reducing recidivism rates among recently released and high-risk individuals.<sup>68</sup> Work-study programs, or on-campus employment, could also be an essential part of a student's financial aid. Postsecondary institutions may wish to use work-study and other on-campus employment opportunities to help formerly incarcerated individuals acclimate to the college environment, provide a stable paycheck, and begin to create an employment history and job references as they begin or resume their professional career.

It is important that justice-involved students not face unnecessary barriers to on-campus employment. The EEOC and DOL [guidance documents](#) discussed above point out how an employer's use of an individual's criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under *Title VII* of the *Civil Rights Act of 1964* and Executive Order 11246, as amended (governing the employment practices of federal contractors, including many postsecondary institutions). Where criminal record exclusions are used differently, or have a disparate impact on, students of different races or national origins, EEOC and DOL have a basis to investigate such exclusions.

### Promising Practice in Action: Student Success Specialists at the University of the District of Columbia Community College

The University of the District of Columbia Community College (UDC-CC) offers every student a counselor, or Student Success Specialist, who provides advice, information about tutoring and community-based social supports, as well as job search assistance. Each Student Success Specialist is trained on how to address some of the unique challenges facing justice-involved individuals. Before a student begins coursework at UDC-CC, he or she meets with a Student Success Specialist to map out viable academic and career trajectories.<sup>69</sup>

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- Incorporate student feedback when determining support services for justice-involved students.*
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Institutions should engage with justice-involved students during their time at the college or university in order to encourage persistence and to improve educational outcomes. Students' firsthand input and experiences can inform administrators as to successes and failures in providing support for justice-involved students. Implementing robust data collection to track what does and does not work and incorporating student feedback will help programs improve their offerings and services.

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- Offer justice-involved individuals financial aid counseling.*
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Consideration of criminal histories can expand barriers to higher education by making it difficult, or even impossible, for students to receive federal financial aid. A student convicted for the possession or sale of illegal drugs may have financial aid eligibility suspended if the offense occurred while the student was receiving federal student aid (grants, loans, or work-study). According to a Government Accountability Office report, during academic year 2003-2004 over 50,000 students were denied federal student aid due to statutory provisions regarding convictions.<sup>70</sup> Considering this data, universities are encouraged to assist students with criminal convictions that might affect

financial aid eligibility, as well as all justice-involved individuals, to access institution-based, state-based, or private sources of financial aid.



*Establish partnerships with the community.*

Supporting justice-involved students is a responsibility shared by schools and communities. Fostering greater partnerships between postsecondary institutions and community and faith-based organizations, nonprofits, or other social service agencies can help address the holistic needs of students and communities. Efforts can be better aligned to support justice-involved students when institutions work collaboratively with stakeholders to engage populations historically underrepresented in accessing and completing higher education.

Colleges and universities may wish to form a consortium to share promising practices and lessons learned, as well as highlight areas for improvement. A single state-based consortium can also help to facilitate a shared understanding of state-specific criminal and civil laws, which will apply to the student population. A holistic effort working across campuses and institutions will help justice-involved students persist, complete, and succeed in their academic and professional careers.

**Promising Practice in Action: New Jersey's College and University Partnership with the State Department of Corrections and Parole Board**

The New Jersey Scholarship and Transformative Education in Prisons Consortium is an association of colleges and universities in New Jersey that works in partnership with the New Jersey Department of Corrections and State Parole Board, to provide higher education courses for students under the custody of the State of New Jersey while they are incarcerated, and assist in the transition to college life upon their release into the community. This consortium allows for the pooling of resources and coordination of efforts.<sup>71</sup>

## Student Spotlight

*I spent nearly five years in and out of my state's prison system. I took college classes when they were available and decided to apply to my state's university. It was one of the few that didn't ask about criminal history. I was ready for a new start, but it was difficult to leave my past behind me.*

*When I started my first semester at the university, I was on electronic monitoring (ankle bracelet). I would try to make friends at the gym playing basketball, but it didn't work well with that thing on my ankle.*

*Before I started there, I was not sure what career I wanted to pursue. I ended up talking to a counselor about what my options were. I was thinking about being a social worker, but she said I had to eventually pass a background check for that specific occupation. For this reason, I went with psychology, which she said didn't involve a background check. Although the school didn't ask for criminal history, the "box" came up in other contexts, like when I was applying for campus research jobs. I was always honest about my criminal history, but I lived in fear that I would be fired if my professors ever found out.*

*When I applied to another state's Psychology PhD program, the fact that I'd obtained an undergraduate degree didn't feel like it meant much. When I arrived at the "have you ever been convicted of a crime" question, I was so disheartened. At first, I didn't even want to fill out the application. Once I did, the excessive requirements for additional information made me keep questioning whether I should bother. Why did they want to know so much about things that happened more than ten years ago? I even felt a little regret for taking classes in prison. When you've moved around a lot like I have, a transcript request can end up being an unbearable task since most prison programs belong to different colleges throughout the state.*

*Even worse than all those transcripts I had to find, and all those questions I had to answer, was when I found out that the details of my crime were getting passed around the department with my application. I was crushed. And after all of that, I didn't get into the program.*

*I learned a lot from my experiences, but I wasn't the only one. The department made major changes to its admissions process after my*

*application was denied. They not only worked hard to get me into their bridge program, they no longer ask for criminal history.*

*My biggest lesson learned was the need to encourage other formerly incarcerated students so they know to keep pushing for higher education even when you feel unwanted. My life is really an amazing story about persistence, motivation, and then overcoming adversity. Unfortunately, the process made me not only keep the story out of my personal statement, but also out of any conversation for fear of the consequences and stigma associated with having a criminal record. I'm proud that I am now able to embrace my story and share it whenever given the opportunity.*

C.M., 32 years of age  
Post-Baccalaureate Student, Psychology

## Conclusion

Education can have a transformative effect on individuals who take advantage of it. Participating in a college environment can enrich an individual's life, expose him or her to new ideas and ways of thinking, and create a well-rounded citizen who is eager and willing to contribute to society. Students who have previously had involvement with the justice system often exhibit the ability to overcome challenging circumstances and deal with obstacles in ways that many traditional college students couldn't imagine. Consequently, these students are able to bring a unique perspective to classroom discussions with their peers.

Higher education leads to increased earnings and employment, which can strengthen our economy, transform communities, and foster intergenerational mobility. Ultimately, by supporting the successful reentry and education of justice-involved youth and adults, institutions can help to create stronger, safer communities and families. Today, however, as revealed in the course of researching and writing this guide, too many justice-involved students with demonstrated intellectual capacity, curiosity, and drive have had to overcome significant obstacles and navigate bureaucratic processes in order to obtain consideration for admissions into a college or university.

The U.S. Department of Education encourages college and university officials to look beyond the box by removing unnecessary barriers to higher education for justice-involved individuals, and demonstrate that a postsecondary education can help to offer students a second chance to change their lives.

## Resources

### Federal Resources

This list of resources is not exhaustive but attempts to address the basic needs of individuals attending postsecondary institutions in order to ensure their success.

#### **Reentry Education Tool Kit**

<http://lincs.ed.gov/reentryed/>

The Department developed a reentry education tool kit, which highlights five critical components of an effective reentry system: program infrastructure, strategic partnerships, education services, transition processes, and sustainability.

#### **National Inventory of the Collateral Consequences of Conviction**

<http://www.abacollateralconsequences.org/>

The National Institute of Justice conducted a study of the collateral consequences of justice involvement in all U.S. jurisdictions. This resource can be used to, among other things, determine what professions a justice-involved individual might be barred from.

#### **Reentry Mythbusters**

<https://csgjusticecenter.org/nrrc/projects/mythbusters/>

The Federal Interagency Reentry Council released a series of MythBusters, or fact sheets, clarifying existing federal policies that affect formerly incarcerated individuals in areas such as financial aid, public housing, employment, parental rights, Medicaid suspension/termination, voting rights and more.

#### **Take Charge of Your Future: Get the Education and Training You Need**

<http://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/take-charge-your-future.pdf>

The Department developed a guide for people who are incarcerated and for those on community supervision (probation and parole) to help them get started — or continue — on the path to further education and training.

## Nonfederal Resources

### **Reentry Services Directory**

<https://csgjusticecenter.org/reentry/reentry-services-directory/>

The Reentry Services Directory was developed by the **National Reentry Resource Center (NRRC)** to help individuals who have been incarcerated, and their families, find local reentry services. The NRRC has compiled a list of organizations and service providers that can address different reentry needs, including housing, employment, and family reunification.

### **The Consideration of Criminal Records in Occupational Licensing**

<https://csgjusticecenter.org/reentry/publications/the-consideration-of-criminal-records-in-occupational-licensing>

This fact sheet, produced by the Council of State Governments Justice Center's National Reentry Resource Center in partnership with the National Employment Law Project, is designed to serve as an informational outline for policymakers and other stakeholders who want to learn more about obstacles that individuals with criminal records face when seeking employment due to state occupational licensing policies. The fact sheet also provides background on collateral consequences and a primer on the impact of policies to reduce barriers to licensing, as well as cost and implementation considerations.

## Appendix A: College and University Self-Assessment

### Reviewing Whether and What To Ask

Does your postsecondary institution inquire about an applicant's criminal justice involvement or conduct background checks on the application? If so, is there any reason why the inquiry cannot be delayed until later in the application process?

At whatever point criminal history is considered during the application process, is the inquiry limited to criminal justice involvement that is relevant to the postsecondary institution or its program of study? For instance, is the inquiry subject matter-specific and limited to more recent history?

Is there a systematic process in place for how criminal justice information is used in assessing admission once collected?

If a student self-disclosure or background check indicates criminal justice involvement, is an applicant automatically disqualified for admission to your postsecondary institution? Or will different examples of criminal justice involvement carry different weight?

Is there a time limit on criminal history questions?

### Reliability of Criminal Justice Information

If your postsecondary institution conducts background checks, is the information being collected from a reputable source with current data?

If your postsecondary institution conducts background checks, do students have the opportunity to review the accuracy of information collected?

Are prospective students given the opportunity to explain past criminal involvement?

Is this information used in combination with other factors to allow for a holistic review of applicants?

### Necessity of Criminal Justice Information for Admissions

Is this information used exclusively to determine admissions decisions? Or is this information used to inform financial aid, housing, or other decisions?

If this information is used for nonadmissions related decisions, is it possible to delay the collection or consideration of this information?

### **Protection of Student Privacy**

Is there a systematic way to ensure criminal history is securely stored in order to maintain an individual's privacy?

### **Staff Capacity to Meaningfully Use Criminal Justice Information**

Are admissions and other personnel trained on how to use criminal justice information?

## Endnotes

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<sup>32</sup> Weisman, Marsha, Alan Rosenthal, Patricia Warth, Elaine Wolf, Michael Messina-Yauchzy, Loren Siegel. *The Use of Criminal History Records in College Admissions Reconsidered*. Center for Community Alternatives, 2010.

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<sup>41</sup> This section describes the disparate impact standard under Title VI of the Civil Rights Act of 1964. See, e.g., *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394 (11th Cir. 1993); U.S. Department of Justice, *Title VI Legal Manual*, § VIII.B (Jan. 11, 2001), <https://www.justice.gov/crt/title-vi-legal-manual>.

<sup>42</sup> See *NYU Revises Admissions Practices for Applicants Convicted of a Crime*, available at <http://www.nyu.edu/about/news-publications/news/2015/05/23/nyu-revises-admissions-practices-for-applicants-convicted-of-a-crime.html>.

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