

THE USE OF CRIMINAL  
HISTORY RECORDS IN  
COLLEGE ADMISSIONS

RECONSIDERED



CENTER FOR COMMUNITY ALTERNATIVES  
INNOVATIVE SOLUTIONS FOR JUSTICE



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# Acknowledgements

This report was written by staff of the Center for Community Alternatives (CCA), Marsha Weissman, Ph.D., Executive Director, Alan Rosenthal, Esq. and Patricia Warth, Esq. Co-Directors of Justice Strategies, Elaine Wolf, Ph.D., Research Director, and Michael Messina-Yauchzy, Ph.D., Research Associate, with editorial assistance from Loren Siegel. The National HIRE Network of the Legal Action Center and its Director, Roberta Meyers-Peebles, were instrumental in identifying individuals whose stories put a human face to the issues addressed in this paper. Jeff Van Buren, Lisa Bailey, and Christine Abaté helped in the proofreading of the report and Karen Jones provided production assistance.

We also wish to convey our appreciation to the American Association of Collegiate Registrars and Admissions Officers and particularly Barmak Nassirian, Associate Executive Director and Lisa Rosenberg, Associate Director, Research, for their considerable assistance with the survey.

Special thanks to the many men and women who were willing to share their stories about their experiences applying to college. We have highlighted but a few of the accounts of difficulties faced by people with criminal records in applying to college. These narratives of hurdles and successes are what animate this report.

The Center for Community Alternatives is grateful to the Fulfilling the Dream Fund for its support of this project.

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The Center for Community Alternatives (CCA) promotes reintegrative justice and a reduced reliance on incarceration through advocacy, services and public policy development in pursuit of civil and human rights.

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# Executive Summary

This report reviews findings from a first-of-its-kind survey conducted by the Center for Community Alternatives in collaboration with the American Association of Collegiate Registrars and Admissions Officers (AACRAO) that explores the use of criminal history screening in college admissions procedures. A 59-question survey was administered electronically between September 30 and October 29, 2009 through AACRAO's network of 3,248 member institutions in the United States. In all, 273 institutions responded to the survey. The survey helped inform the recommendations contained in this report.

## Key Findings

- A majority (66%) of the responding colleges collect criminal justice information, although not all of them consider it in their admissions process. Private schools and four-year schools are more likely to collect and use such information than their public and two-year counterparts.
- A sizable minority (38%) of the responding schools does not collect or use criminal justice information and those schools do not report that their campuses are less safe as a result.
- Self-disclosure through the college application or in some cases the Common Application is the most typical way that colleges and universities collect the information. A small minority of schools conduct criminal background checks on some applicants, usually through contracting with a private company.
- Most schools that collect and use criminal justice information have adopted additional steps in their admissions decision process, the most common of which is consulting with academic deans and campus security personnel. Special requirements such as submitting a letter of explanation or a letter from a corrections official and completing probation or parole are common.
- Less than half of the schools that collect and use criminal justice information have written policies in place, and only 40 percent train staff on how to interpret such information.
- A broad array of convictions are viewed as negative factors in the context of admissions decision-making, including drug and alcohol convictions, misdemeanor convictions, and youthful offender adjudications.
- If it is discovered that an applicant has failed to disclose a criminal record there is an increased likelihood that the applicant will be denied admission or have their admission offer rescinded.
- A slight majority of schools that collect information provides support or supervision for admitted students who have criminal records, with more emphasis on supervision rather than supportive services.

# Discussion

**The collection and use of criminal justice information (CJI) by colleges and universities is problematic for a number of reasons.**

**No link has been established between having a criminal record and posing a risk to campus safety.**

While college campuses are not immune from crime, the data show that they are remarkably safe places compared to the community-at-large. This is particularly true for serious crimes that involve personal violence. Violent crime on campus is rare, and the few college students who are victims of such crimes are mostly victimized off-campus by strangers. The Virginia Tech incident, a tragic but aberrational event, was committed by a student who did not have a criminal record. Our argument for eliminating the collection and use of CJI in admissions decisions is in large part based on the absence of any empirical evidence showing that students with criminal records pose a safety risk on campus.

**Having a criminal record is not an unusual characteristic in America today.**

There has been a dramatic increase in the reach of criminal sanctions over the past three decades. As a result, by year end 2008 more than 92 million Americans had a criminal history record (arrest and/or conviction) on file in the state repositories, and more than 2.3 million people were in jails and prisons, giving the U.S. the highest incarceration rate in the world. These high numbers are largely driven by the phenomenon of “overcriminalization” – classifying an ever-widening range of behaviors as criminal. Misdemeanor cases, many of them involving petty offenses like under-age drinking, have doubled in the past thirty years.

**This is a civil rights issue.**

Racial disparities have been documented in the processing of every type of crime, from juvenile delinquency to low-level misdemeanors to the imposition of the death penalty. So pervasive is the criminal justice system in the lives of black men that more black men have done prison time than have earned college degrees. Because racial bias occurs at every stage of the criminal justice system, screening for criminal records cannot be a race-neutral practice.

**Criminal records are often inaccurate and/or misleading.**

The U.S. Department of Justice, Bureau of Justice Statistics has found that “inadequacies in the accuracy and completeness of criminal history records is the single most serious deficiency affecting the Nation’s criminal history record information systems” and that “Many of the criminal history records currently circulated by the repositories are difficult to decipher, particularly by noncriminal justice users and out-of-state users.”

**Accepting college applicants with criminal records promotes public safety.**

Higher education opens doors of opportunity, enhances critical thinking, and leads to better and more stable employment. Studies show that a college education dramatically reduces recidivism. Colleges and universities promote public safety when they open their doors to people with criminal records who demonstrate the commitment and qualifications to pursue a college education.

## Recommendation

Colleges and universities should refrain from collecting and using criminal justice information in the context of college admissions.

# Secondary Recommendations

For those colleges and universities that continue to screen for criminal history record information, the following steps should be taken to reduce the detrimental effects of these practices:

**1**

**Remove CJI disclosure requirement from initial application for admission.**

- a) Make CJI inquiry only after conditional admission.

**2**

**Limit disclosure requirement to specific types of convictions:**

- a) Only convictions for felonies, not misdemeanors or infractions.
- b) Only felony convictions imposed within the past five years.
- c) Only convictions for felonies committed after the individual's nineteenth birthday.

**3**

**Establish admissions criteria that are fair and evidence-based:**

- a) Remove barriers to admission of individuals who are under some form of community supervision.
- b) Avoid policies that impose blanket denials for particular crimes.
- c) Provide an opportunity to document personal growth and rehabilitation.
- d) Avoid requiring applicant to produce his "official" criminal history record information.

**4**

**Base admissions decisions on assessments that are well-informed and unbiased:**

- a) Develop in-house expertise.
- b) Perform an assessment and multi-factor analysis to determine whether a past criminal offense justifies rejection.
- c) Failure to disclose should not be the grounds for automatic rescission of an offer of admission or an expulsion.

**5**

**Establish procedures that are transparent and consistent with due process:**

- a) Any policy regarding criminal history information screening should be in writing to ensure fairness and consistency.
- b) Inform students in writing of the reason for the withdrawal of an offer of admission.
- c) Applicants should be afforded the right of appeal.

**6**

**Offer support and advocacy:**

- a) Provide on-campus support services for students who have criminal records.
- b) Provide information and assistance when a prospective student's chosen field or profession bars individuals with criminal records.

**7**

**Evaluate the policy periodically to determine whether it is justified.**

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# I. Introduction

Juan<sup>1</sup> graduated from a four-year university in May 2010. He began his higher education at a community college which did not ask about his criminal record. But questions about criminal convictions were included on the application to the four-year institution to which he transferred.

Juan's criminal record made it difficult for him to enroll and attend the school of his choice. He was admitted after undergoing reviews of his record (which pre-dated college) but the university placed him on disciplinary probation. He remained on disciplinary probation for the next two years in spite of the fact that he had no further criminal involvement or on-campus problems of any kind. Each semester a hold was put on his admission and he would have to go through a special review before being permitted to return. Disciplinary probation status restricted Juan's ability to fully participate in campus activities. He was selected for the Beta Alpha Psi Honor Society, but his disciplinary probation status prevented him from serving as an officer or representing the university in any way.

Juan graduated with honors and applied and was accepted into a graduate MBA program at the same university. Despite the fact that he has an excellent undergraduate record, the university will require that he continue on disciplinary probation while in graduate school. Juan has appealed this decision. At the time this study was completed, Juan was notified that his appeal was successful and he will no longer be subject to disciplinary probation. While he is pleased with the results, Juan stated that he was bothered by having to go through such a process after so many years.

Juan was disappointed that he could not be an officer and could not represent the university. He also found the university's attitude towards him to be very discouraging and could understand how someone with less commitment and fortitude would be deterred from pursuing their higher education goals.

Despite these obstacles, Juan describes college as *"part of his redemption....College has helped change my life."*

<sup>1</sup> All of the names in the case histories have been changed to protect the confidentiality of the particular individuals.

# Juan's situation is not an isolated example.

Juan's story is one of many that show how a criminal conviction can serve as an unfair and unjustified obstacle to gaining a higher education. Juan's situation is not an isolated example. While it is easy to assume that exclusions based on criminal records only affect a few "bad" people, in fact there are millions of people with criminal records in the U.S. today. As of 2008, an estimated 92 million people in the U.S. had a criminal history record (arrest and/or conviction) (SEARCH 2009). An additional 14 million arrests are recorded annually (FBI 2009). African American and Latino communities have been hit particularly hard by extremely aggressive policing, prosecution and incarceration. The explosive growth of criminal records databases and the ease with which those databases can be accessed on the Internet means that punishment no longer ends at the prison door or even at the end of probation or parole. The collateral consequences of a conviction affect people long after they have "paid their debt to society," creating barriers to civic participation, employment and, to an increasing extent, a college degree.

This report reviews the responses and findings from a first-of-its-kind survey conducted by the Center for Community Alternatives (CCA) in collaboration with the American Association of Collegiate Registrars and Admissions Officers (AACRAO) that explores the use of criminal history screening in admissions procedures. The findings heighten CCA's concern that people with criminal records are finding it increasingly difficult to enroll in colleges and universities to the detriment of both public safety and equal opportunity.

The use of criminal justice information (CJI) to screen prospective college applicants grows out of legitimate concerns for public safety which emerged in the aftermath of the tragic and highly publicized events at Virginia Tech and a few other college campuses. While college campuses are not immune from crime, the data show that they are remarkably safe places compared to the community-at-large. This is particularly true for serious crimes that involve personal violence. Violent crime on campus is rare, and the few college students who are victims of such crimes are mostly victimized off-campus by strangers. The Virginia Tech incident, a tragic but aberrational event, was committed by a student who did not have a criminal record. Our argument for eliminating the collection and use of CJI in admissions decisions is based on the absence of any empirical evidence showing that students with criminal records pose a safety risk on campus.

Depriving people of access to higher education based on a criminal record does not make campuses safer; instead it undermines public safety by foreclosing an opportunity that has proven to be one of the most effective deterrents to recidivism. Just as important, given the extreme racial disparities present throughout the criminal justice system, it becomes a de-facto abrogation of civil rights. In 21st century America, a criminal record has

become a surrogate for race-based discrimination, serving the same function, albeit unintentionally, as the Black Codes and Jim Crow laws in earlier times (Alexander 2010). Hyper-aggressive law enforcement in low-income communities of color has led to the overrepresentation of African Americans and Latinos among those with criminal convictions. Excluding otherwise qualified applicants from attending college because of a criminal record has the effect of depriving large numbers of people of color from opportunities that form the core of the “American Dream.”

In recent years there has been a growing awareness of the effect of a criminal record on access to employment and the right to vote. We have come to understand that denying jobs to people who are striving to rehabilitate themselves means locking them out of the labor market. There is a growing movement to limit the use of criminal records in employment, from campaigns to “ban the box” on employment applications to expanding anti-discrimination protections to cover people with criminal records. In the area of voting rights, many states have reformed laws that disenfranchised people with criminal records.

**As of 2008,  
an estimated  
92 million  
people in  
the U.S. had  
a criminal  
history  
record.**

There is less public awareness about barriers to higher education, although this issue is beginning to receive some attention. Earlier this year, the American Bar Association passed a resolution calling upon “federal, state, territorial and local governments to increase the opportunities of youth involved with the juvenile or criminal justice systems and to prevent the continuing discrimination against those who have been involved with these systems in the past by limiting the collateral consequences of juvenile arrests, adjudications, and convictions.”<sup>2</sup> The resolution specifically urges the passage of laws to “Prohibit colleges, universities, financial aid offices, and other educational institutions...from considering juvenile adjudications or criminal convictions unless engaging in the conduct underlying the adjudication or conviction would provide a substantial basis for denial of a benefit or opportunity even if the person had not been adjudicated or convicted.”

This report describes the current state of the practice of using CJI in the college application process and how these practices affect prospective students. Part II summarizes the evolution of the concern about crime on campus. Part III provides major findings from the national survey. Part IV discusses the implications of these findings in the context of how the criminal justice system functions in the United States. Part V briefly discusses the importance of a college education in enhancing public safety and long-term rehabilitation. Part VI provides practical recommendations for improving public safety on college campuses without resorting to the screening and exclusion of people with criminal records. For those institutions committed to criminal history screening, we offer guidance on how to minimize the risk that such screening will result in the denial of admission to an otherwise qualified applicant who poses no greater threat to campus safety than the average student who has no prior criminal history record.

<sup>2</sup> <http://www.abanow.org/wordpress/wp-content/themes/ABANow/wp-content/uploads/resolution-pdfs/MY2010/summaries/102A-passed-as-revised.pdf>

## II. College Campuses and Public Safety Concerns

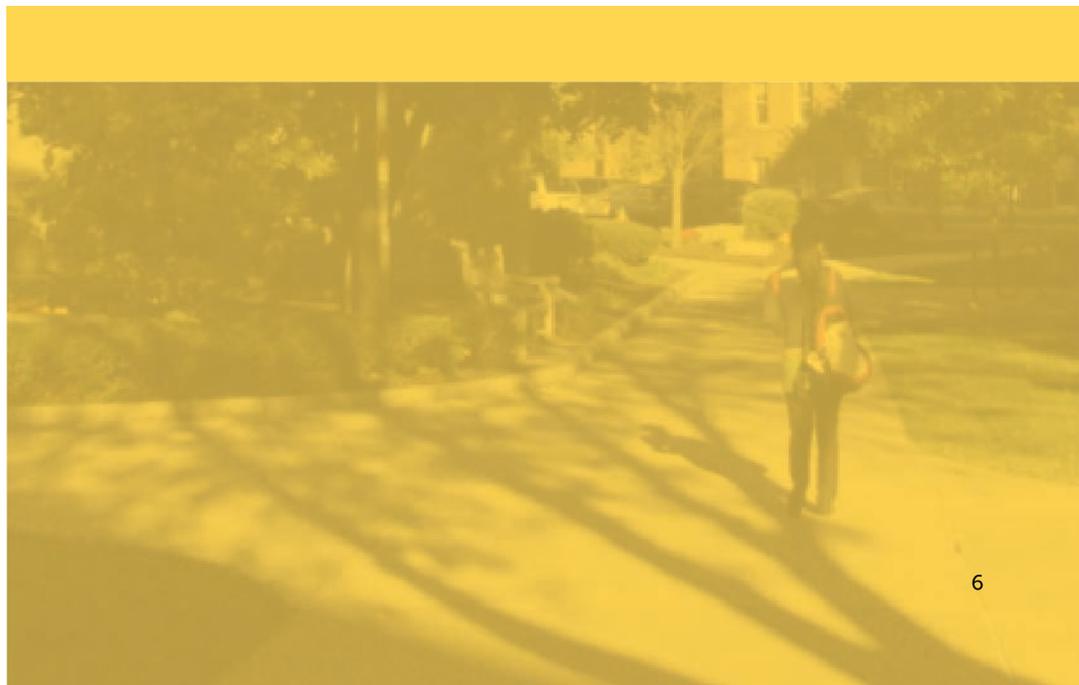
College campuses are commonly seen as “Ivory Towers,” immune from the travails of daily life, including crime. However in 1991, in the throes of a general “tough on crime” political environment, Congress passed the Crime Awareness and Campus Security Act (known as the Clery Act) that requires colleges and universities to track and report campus crime statistics, post security policies and make timely warnings. As with most federal criminal justice legislation, the Clery Act was named for an individual victim of a heinous, but aberrant, crime. Jeanne Clery was a 19-year old Lehigh University College freshman who was murdered in her dormitory. Her parents mounted a campaign to pass a law that would provide students and their families with information about crime on campus so that the relative safety of a campus could be considered as a factor in the college selection process.

Clery Act reports filed by colleges and universities show that they are very safe places. They also show that crimes committed on campus are more likely to involve students who have no criminal records, such as those students who killed Jeanne Clery and the student who opened fire at Virginia Tech. Nevertheless, a few high profile crimes and concerns about institutional liability have prompted the adoption of admissions policies that require prospective applicants to disclose their criminal records and even their secondary school disciplinary history. The Common Application, used by more than 488 universities and colleges, added questions about both criminal convictions and school disciplinary records in 2006 (Jaschik 2007). Many colleges that do not use the Common Application have also started to include such questions on their applications.

These practices are overreactions to exceedingly rare occurrences. Violent crime on campus is very uncommon, and the few college students who are victims of violent crimes are mostly victimized off-campus by strangers. According to the U.S. Department of Education (2001) the overall rate of criminal homicide at colleges and universities was .07 per 100,000 students compared to a rate of 14.1 per 100,000 young adults in society-at-large. This means that college students are 200 times less likely to be the victim of a homicide than their non-student counterparts. Rape and sexual assault are the only crimes showing no statistical differences between college students and non-students (Hart 2003; Baum & Klaus 2005); these crimes are most often committed at campus parties by inebriated students who have no prior criminal records. The U.S. Department of Education (2001) concluded that “students on the campuses of post-secondary institutions [are] significantly safer than the nation as a whole” (p.5).

The assumption that is made in order to justify criminal history record screening is that doing so will make campuses safer. However, there is no evidence upon which to base this assumption. In fact, in the only study that has investigated the correlation between criminal history screening and improved campus safety, no connection was found (Olszewska 2007). In this study, administered to undergraduate admissions directors, the practices of inquiring about past disciplinary histories during the admissions process (including criminal information, school judicial background, military discharge information and the practice of conducting criminal background checks) were examined and compared to campus crime rates. Olszewska found that there is no statistically significant difference in the rate of campus crime between institutions of higher education that explore undergraduate applicants' disciplinary background and those that do not (Olszewska 2007).

**“students on the campuses of post-secondary institutions [are] significantly safer than the nation as a whole.”**



### III. Findings from the National Survey of Screening and Use of a Criminal History in the College Admissions Process

The Center for Community Alternatives in partnership with the American Association of Collegiate Registrars and Admission Officers (AACRAO) developed a survey instrument to explore the use of criminal records in college applications and admissions. The 59-question survey was administered electronically from September 30 to October 29, 2009 through AACRAO's network of 3,248 member institutions in the United States. In all, 273 institutions responded.

The survey instrument provided space for respondents to offer comments and we reviewed the comments carefully to enrich our understanding of the data. In addition, we conducted follow-up interviews with six college admissions officers to learn more about the reasons underlying decisions of whether or not to require the disclosure of CJJ as part of the application process.<sup>3</sup> At the start of the survey, respondents were asked to enter their educational institution identification number for the purpose of cross-tabulating survey responses with demographics and other relevant data from U.S. Government databases. To insure confidentiality respondents were informed that AACRAO would not share institutional identities with CCA researchers who received only coded demographic data for respondents in the data set.

The survey questions focused on several key issues:

- 1. How widespread is the collection of CJJ in the college application process and how do colleges collect this information?***
- 2. Does the institution have special procedures to evaluate the admission of prospective students with criminal records?***
- 3. In what ways does an applicant's criminal history affect his or her admission to the college or university?***
- 4. What post-enrollment conditions or services are required of or offered to students with criminal records?***

<sup>3</sup> The interviews were conducted only with individuals who noted on their survey that they would be open to a follow-up contact.

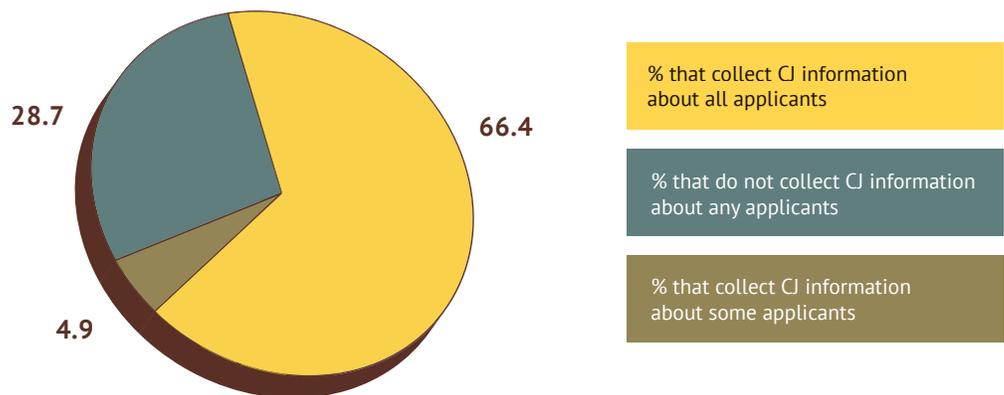
# 1

## How widespread is the collection of CJ in the college application process and how do colleges collect this information?

A majority of the responding colleges collect CJ, although not all of them consider it in their admissions process. (Figure 1). Sixty-six percent collect it from all applicants but 16 percent of respondents indicated that although they collect the information, they do not use it in the admissions process.<sup>4</sup> Five percent collect CJ only for applicants who are applying to specific programs. Another twenty-nine percent do not collect it at all, but a small subset of those colleges use CJ in their admissions process if the information comes to them through a source other than self-disclosure.

As shown in Figure 2, the total percentage of colleges who do not use CJ is 38 percent (Figure 2). None of the respondents whose colleges do not use CJ indicated in their comments that they believed their campuses were less safe as a result.

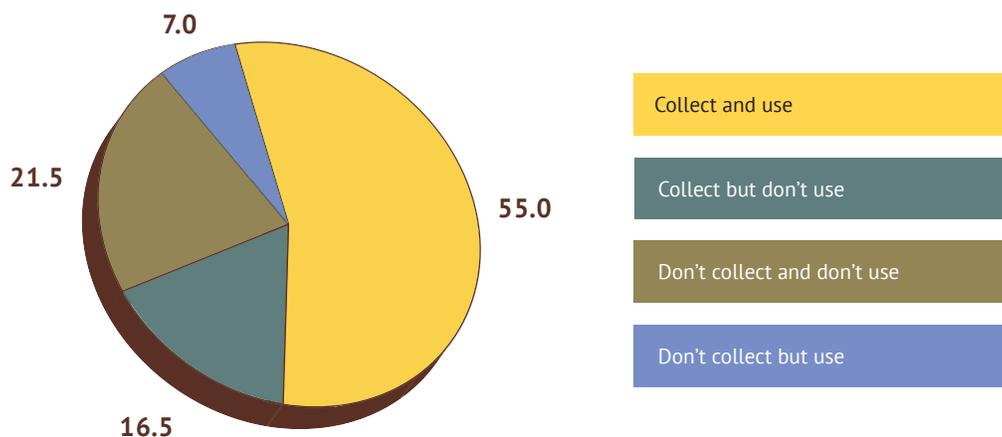
**Figure 1**  
**Practices regarding the collection of criminal justice information**



<sup>4</sup> Some colleges that use the Common Application will automatically “collect” criminal justice history information through the Application’s self-disclosure question. Although collected, some colleges report that they do not consider it in the admissions decision.

**Figure 2**

**A majority of schools collect criminal justice information, but not all of them use it in the admissions process**



The responses differ significantly by sector and level, with private schools and four-year schools being much more likely to consider criminal history in the admissions decision than their public and two-year counterparts. Private four-year schools are significantly more likely to “collect and use” than other schools.

Kanye, a former high school track star and honor student, grew up with two sets of companions – his school friends and his ‘dropout’ friends from the nearby housing project, kids with high unmet needs ‘at risk’ for problems. “*You don’t stop being friends because somebody quit school,*” he says. So Kanye studied, ran track, stocked groceries, and helped an elderly neighbor, but hung out in the evening with friends who stole and did drugs. “You can get caught up in wanting things, showing off to friends. I made a big mistake.” Kanye went along with a plan concocted by one of those friends and was charged near the end of his junior year with felony armed robbery.

Afterward, Kanye expressed sorrow and shame for his victim’s trauma. Fortunately for him, Kanye’s attorney was able to get him adjudicated as a youthful offender. His record was sealed and jail time reduced to less than a year. Spending half his senior year behind bars, Kanye was fortunate to have the support of his high school teachers. He did lessons by mail and, despite resistant corrections officials, took his SATs in jail to meet NCAA standards for a track scholarship. Released

in February of his senior year, he took day and night classes to graduate on time.

Kanye says he was lucky. “*As a youthful offender, I didn’t have to disclose that I had a charge.*” He started college with partial funding the next fall. “*Going to college meant everything to me,*” he says.

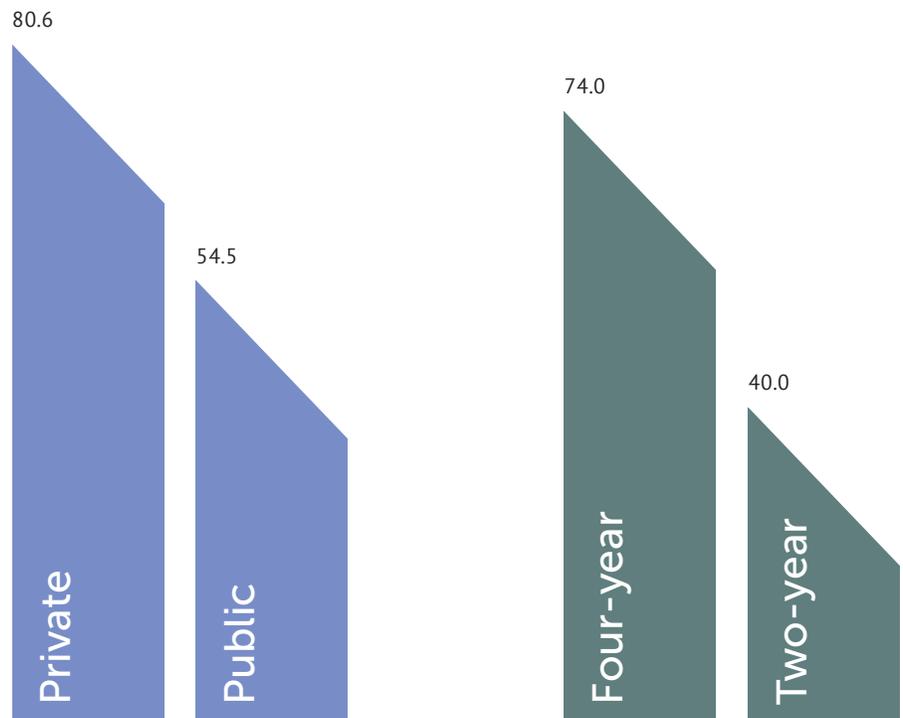
At college, Kanye met the director of a national not-for-profit organization located in Washington, DC. The director was so impressed with the Kanye that he recruited him into his organization with salary and full college tuition. Kanye transferred to a nearby University and completed his Bachelor of Science degree while working.

Now twenty-seven years old, Kanye directs a major national program to reduce school violence. He travels the country to establish partnerships between community organizations and city schools. He recruits others like himself to be school mentors. Once jailed for a violent crime, he works to prevent youth violence. Kanye is back on track and leading his community to a better future because he was given a second chance.

There are two primary mechanisms through which colleges and universities collect criminal history information – through self-reporting and/or criminal background screening. Self-reported information typically comes in response to questions posed in the admissions application. Background check information can be collected in a variety of ways including through the State Central Repository (the state agency responsible for collecting and maintaining official criminal records), through a public information search, through another database, or by contracting with a private company that specializes in background checks. The background checks can be multi- or single-state.

Self-disclosure through the college application is the most common way that colleges and universities collect CJ: 64 percent of the institutions that responded to the survey reported that their applications ask for disclosure of a criminal record. It is more common for private institutions to ask such questions on the application (81%) and four year colleges were more likely to ask for self-disclosure than two-year colleges (74% compared to 40%) (Figure 3).

**Figure 3**  
**Percentage of responding schools that require applicants to self-disclose a criminal record, by sector and level**



Some institutions (5% of respondents) require only a subset of applicants to disclose their criminal record. Most often this occurs when someone applies to a program that prepares students for jobs that appear to be closed to people with criminal records. Health-related degree programs were identified as one example. One of the admissions officers interviewed stated that although her college does not automatically reject students with criminal records, such applicants who want to enroll in the Health Division are told that they will not be able to fulfill their degree requirements since they will not be permitted to intern at a clinical site. *“At that point,”* the admission officer added, *“people usually withdraw their application.”*

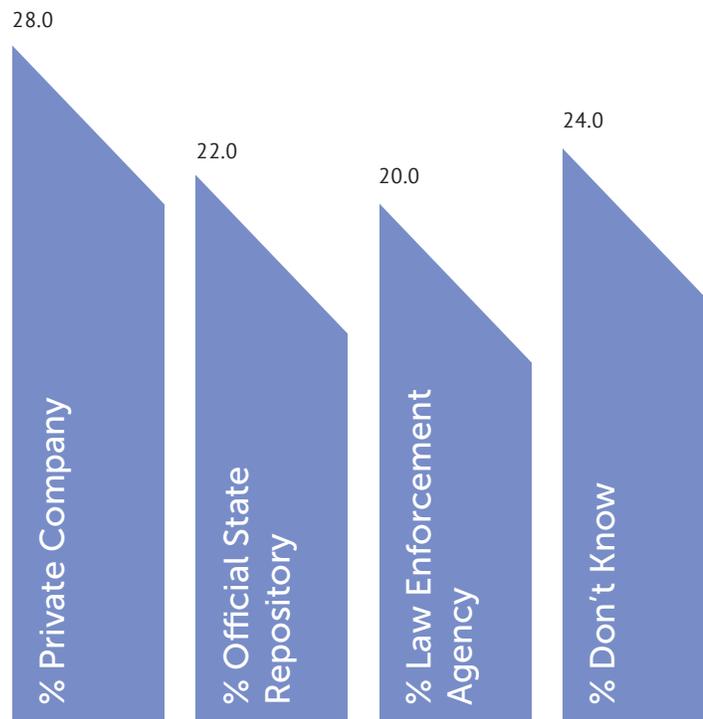
Alfreda began college after being convicted of a felony. She started at a two-year community college, was a Dean's list student, and graduated with honors. She wanted to pursue a Bachelor's Degree but feared that she would be rejected if her criminal conviction was revealed.

She is convinced that one school did not admit her because of her record. She completed the application, disclosing her criminal record. The college admissions office then requested additional information describing the offense and the legal charge. Although the request made her feel *“shamed, dirty and less-than-deserving”*, Alfreda quickly provided the required information. Almost immediately she received a letter of rejection: *“We regret to inform you... I have that memorized.”* After that she limited her applications to schools that did not ask about criminal history records. Alfreda did not have the financial resources to pay application fees to schools she believed would automatically reject her.

Although she wants to further her education Alfreda is discouraged because she has been repeatedly told that she will never get a nurse's license or be able to work in the health field: *“The major thing holding me back from a higher college degree in the fields that I am interested in is licensing – can't get licensed with a felony-- in nursing, or any medical.”* Nonetheless, she greatly values her college experience: *“I'm sure if I hadn't gone to college, I'd be either dead or working as a maid in a hotel...Instead I work in the mental health field which I enjoy.”*

Only 20 percent of schools (50 institutions) reported that they conduct a criminal background check, most commonly through a contract with a private company (Figure 4). Twenty-two percent of those schools noted that they conduct background checks through the official state repository agency and another 20 percent reported collecting this information through a single-state law enforcement agency. Twenty-four percent of the schools that conduct criminal background checks--the second highest response-- answered that they did not know how the background checks were conducted.

**Figure 4**  
**Source of information for criminal background checks**



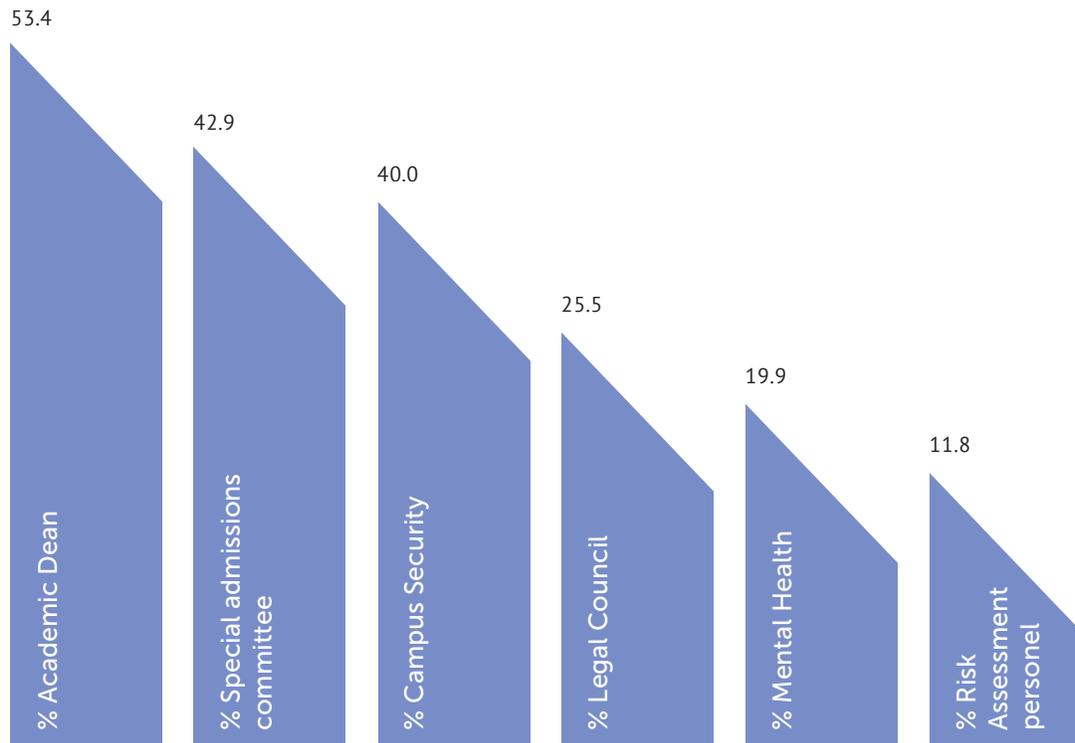
Of the 50 schools that conduct some form of background check screening, 14 percent do so for all students and another 14 percent do so only for students who are selected for admission. The remaining 72 percent of schools conduct background screenings only in certain circumstances: 56 percent screen applicants who disclosed a criminal conviction, 20 percent conduct screening for applicants applying to specific programs where future employment could be affected by a criminal record, and 10 percent conduct screening on a case-by-case basis.

# 2

## Do the colleges and universities that collect and use CJ have special procedures for evaluating whether or not to admit students with criminal records?

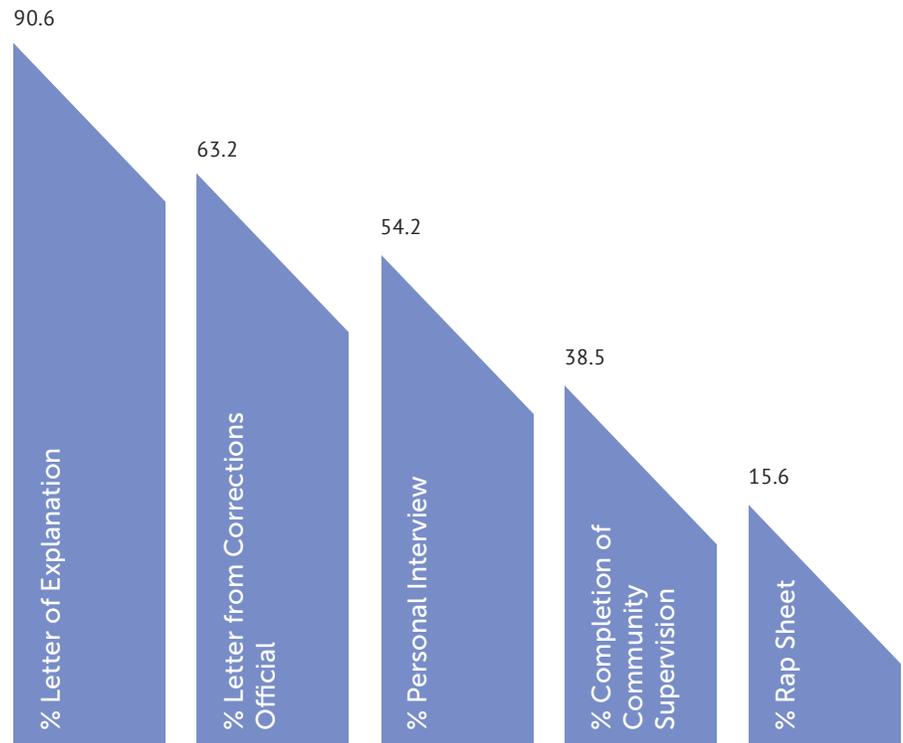
Most schools in this category have adopted additional procedures for making admissions decisions about applicants with criminal records. Only 6 percent of the schools that consider a criminal history say their process is identical for applicants with and without a criminal record. Seventy-five percent of colleges with special procedures bring in decision-makers who are not generally involved in admissions decisions. Academic deans and campus security staff are the most common choices: fifty-three percent of schools bring in deans and 40 percent of schools include campus security personnel. (Figure 5). Fifteen of the responding schools indicated that a campus security office's negative recommendation results in an automatic denial of admission. Special admissions committees are used by 43 percent of schools who have special procedures. Less common is the involvement of legal counsel (26%), counseling or mental health staff (20%) or risk assessment personnel (12%).

**Figure 5**  
**Personnel involved in admissions decision for applicant with a criminal record**



A majority of the schools with special procedures have extra requirements for applicants with criminal records. The most common of these is a letter of explanation (91%) and/or letter from corrections official (probation, parole, corrections) (63%) (Figure 6). Fifty-four percent of colleges that consider criminal histories require a personal interview. Almost forty percent require that prospective students have completed any term of community supervision before they can be admitted. Sixteen percent require the applicant to produce official criminal justice documents, such as a rap sheet.

**Figure 6**  
**Special requirements for applicants with criminal records**



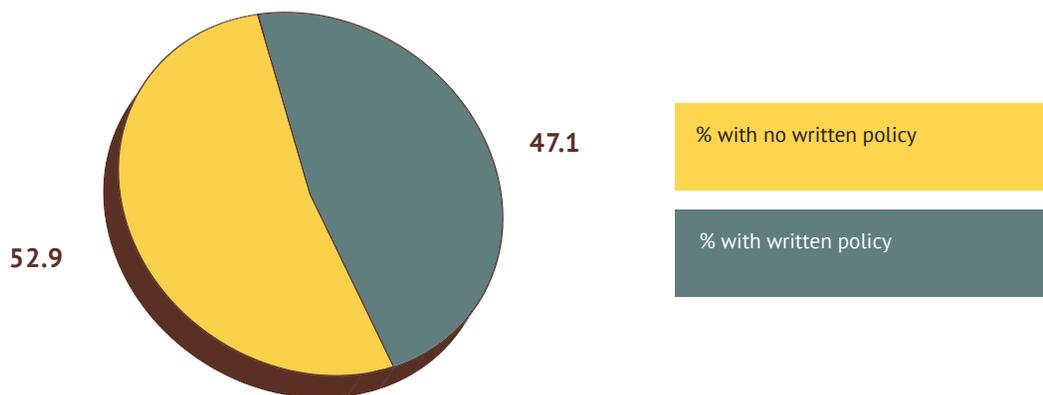
One admissions director interviewed stated that applicants who disclose a criminal record are asked to submit their rap sheet, a letter from their parole officer and a personal essay, noting that *“a lot of people drop out [of the application process] at that point.”* He estimated that only about 5 out of an estimated 30 applications a year from prospective students who disclose a criminal history will move forward with their applications once the additional information is requested.

Rachael, who graduated with honors from her undergraduate college, wanted to pursue a Ph.D. in political science. She was shocked to learn that many of the doctoral programs were requesting information about arrests and convictions. Rachael, who had a misdemeanor conviction, decided not to apply to her first-choice school; she assumed her record would be held against her and could not afford to spend \$200 on an application fee when she feared she would not get a fair review. Her own words convey her feelings about being discouraged from applying to her first-choice school: *"I was disappointed....I felt like it was a waste of time to try to apply when that was one of the first questions asked in the application process. Despite being one of the best suited departments*

*for my particular interests, I chose not to apply ... I was also scared that despite reaching a point in my life where I was a strong contender for the top ten political science doctoral programs, my mistake may destroy my future opportunities."* Rachael instead applied and was accepted into a graduate program that did not ask about criminal records and is now working with a widely recognized professor whose interests include the collateral consequences of a criminal conviction. Rachael commented: *"It struck me as odd that if someone was at a point in their life to apply for doctoral programs that a criminal record should play a role in the decision-making process."*

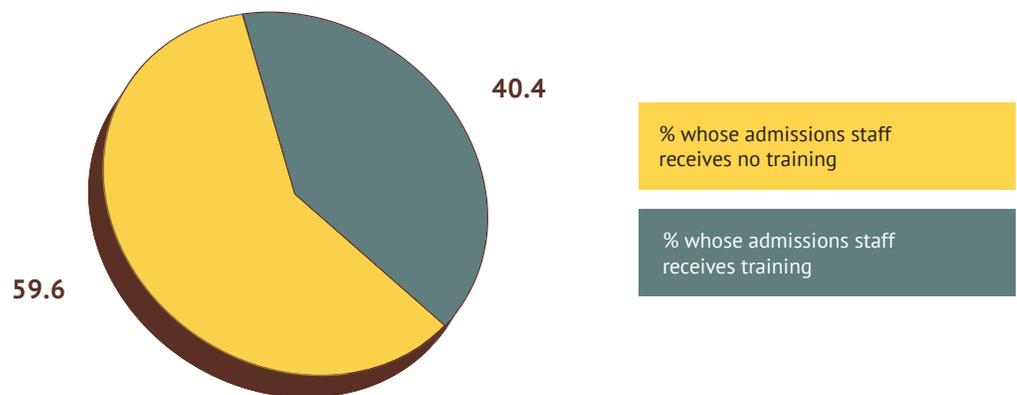
Less than half of the schools that collect and use criminal justice information have written policies to guide admissions officers and others involved in the admissions process (Figure 7). Several of the admissions officers we interviewed commented that written policies and best practices would be helpful.

**Figure 7**  
**Existence of a written policy regarding the admissions of applicants with a criminal record**



Finally, only 40 percent of schools that consider criminal history information in the admissions process train staff on how to interpret CJ (Figure 8). The people who are most likely to receive such training are admissions staff and the training is most often provided by campus security (one-third of the schools indicate that campus security are the trainers), other admissions staff (23%), “other staff” (23%), or legal staff (22%).

**Figure 8**  
**Training for admissions personnel on interpreting criminal records**



*“I felt like it was a waste of time to try to apply when that was one of the first questions asked in the application process.”*

# 3

## How does an applicant's criminal record affect his or her admission?

It is noteworthy that a quarter of the schools that collect CJI from applicants report that they do *not* use that information as a basis for denying admission. Disclosure of a criminal record is more likely to trigger additional screening rather than automatic disqualification. Sixty-one percent report that they consider criminal justice information in the admissions decision, while a quarter of the responding schools report that they have created at least some criminal justice-related automatic bar to admission. Convictions for a violent or sex offense are the most likely to trigger an automatic denial of admission. Of the schools that responded to the survey indicating that they impose some special requirements for applicants with criminal records, almost 40 percent stated that they do not admit students who have not yet completed their term of community supervision.

Latesha's choice of what kind of college to go to and what course of study to pursue was greatly influenced by her past criminal history. She wanted to be a nurse but believed that nursing schools would not admit her and that, even if she was able to graduate, she would not be able to get her nurse's license. *"I did not apply [to nursing schools and even certain colleges] because I knew my felony would hold me back ... I would not be able to get in."* Instead, Latesha chose to pursue a degree in social work, although she was aware that it might be difficult to find work in that field because of a past criminal record.

At the time of her application, Latesha had pending charges in another state. She was charged with a violent felony offense. She disclosed this on her application and was asked to provide additional information including a statement of the circumstances of the crime and official records. She said that having to provide this additional information was discouraging and she expected to be rejected. But she was admitted, graduated with a Bachelor's Degree in Social Work and is completing her Master's Degree.

Because her case was pending, Latesha faced competing demands of court and school requirements. During her first year of college,

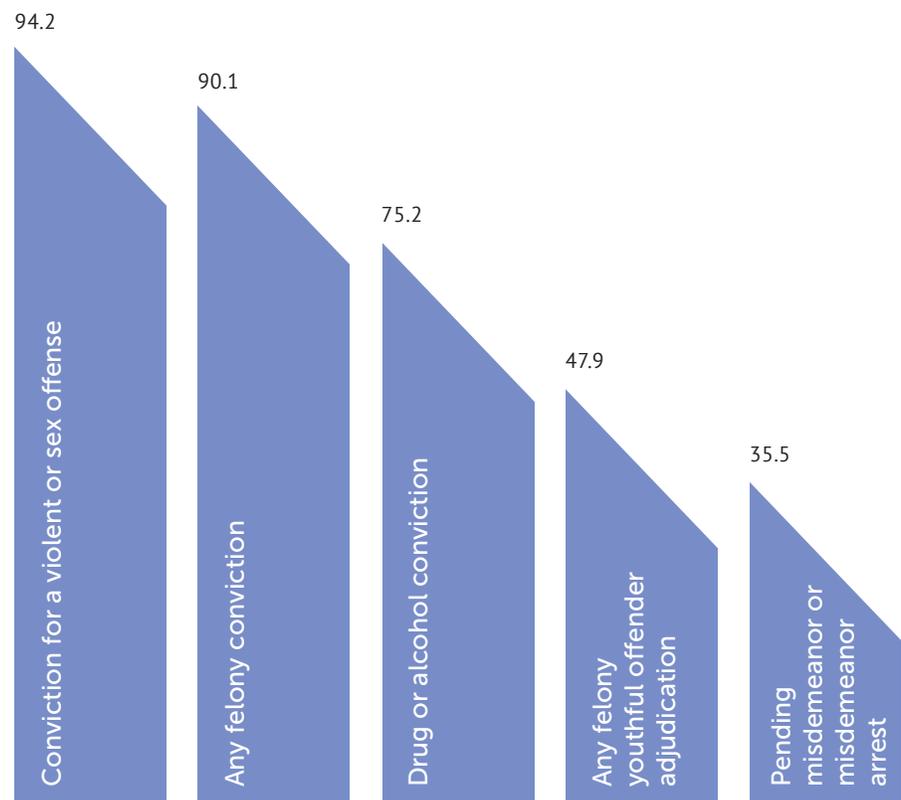
Latesha had to make monthly court appearances. She says: *"Although a first time offender, dealing with court and school and being judged in my school life and personal life was difficult."*

Latesha credits support from her advisor, the Dean of the School, and some professors for helping her through this difficult time: *"I was blessed... [my advisor] gave me much emotional guidance. The few professors who knew my circumstances allowed me to hand in my work online while away at court. I was able to make up assignments when I was absent for court as well."*

With a Bachelor's degree in hand, and an MSW underway, Latesha has been able to obtain satisfying work. She says of her college opportunity: *"Having a college degree has always been a goal of mine and was instilled in me. It makes me feel blessed and thankful that I do have a degree. My degree has helped my life because although I do have a conviction, my degree, work history and character have blessed me with strong employment opportunities. I currently work in the social service field; my degree and life experience have helped me to be able to relate to my clients."*

The survey also looked at how colleges and universities that collect and use CJI interpret that information and found that a broad array of convictions are viewed as negative factors in the context of admissions decision-making (Figure 9). Not only are convictions for a violent crime or sex offense viewed negatively (94 percent view each of these crime convictions negatively) but 90 percent of schools reported that they considered any felony conviction negatively, and 75 percent considered a drug or alcohol conviction negatively. Over half reported that youthful offender adjudications for underlying violent or sex offenses were a negative factor and almost half reported that they considered any felony youthful offender adjudication negatively.<sup>5</sup> About a third of schools reported that they considered pending misdemeanors or misdemeanor arrests in a negative light and 11 percent stated that they viewed “lesser offense youthful offender adjudications” negatively.

**Figure 9**  
**Percentage of schools that view specific types of criminal records negatively**



<sup>5</sup> Treatment of a YO adjudication as a negative factor underscores the broad misunderstanding about the criminal justice process. In most states it is not considered a criminal conviction and a person is legally entitled to not disclose it. In the State of New York where a YO adjudication is more familiar to admissions officials, some State University of New York (SUNY) applications actually, and correctly, warn students that they should not report a YO adjudication as a conviction.

If a college admissions official concludes that an applicant has failed to disclose a criminal record there is an increased likelihood that the applicant will be denied admission or have the admission offer rescinded. Thirty-two percent of schools that consider criminal history information reported that they automatically deny admission to applicants who fail to disclose their criminal record and another 46 percent stated that they might deny admission. Most of the comments offered in conjunction with this question suggest that failure to disclose a criminal record is considered to be a deliberate act of lying or falsification.<sup>6</sup> The interviews with admissions staff provided some examples of how schools learn of a criminal history in the absence of self-disclosure. In one instance, further investigation, after a student was involved in some trouble on campus, turned up a past record. In another instance, a high school guidance counselor disclosed CJJ and in another case, the school was contacted by the FBI about an ongoing investigation.

Of the 160 schools that report that admission can be denied on the basis of having a criminal record, two-thirds report that they inform applicants that their record is the reason for denial. Of those, one-third of the schools report that they do not have an appeals process. Over half of the schools that have an appeals process provide that information to all applicants denied because of a criminal record, and an additional 14 percent provide that information only to some denied applicants. Twenty-eight percent report that although they have an appeals process, they do not inform denied applicants of that option.



<sup>6</sup> Such a conclusion may not be justified. As explained elsewhere in this report, the mistaken conclusion that the student intentionally falsified the application by failing to disclose may be the result of misreporting on a background check, a misinterpretation of a background check entry, or confusion on the part of the applicant about the exact nature of the conviction.

# 4

## What post-enrollment services or conditions are offered to or required of students with criminal records?

More than half (55 percent) of the schools that collect CJR report that they either provide some level of support or require supervision for at least some students who have a criminal record. Of the schools that responded to the open-ended question regarding support services or supervision, the greater emphasis was on supervision by a 3 to 2 margin. Forty-three percent of the schools commented that their assignment of a student to special programs is made on a case-by-case basis.

Richard applied to schools that did not ask about his criminal record and was able to enroll with ease. He was assisted in his college application process by an organization called College Initiative (CI) located in New York City. CI is a not-for-profit reentry education program that helps formerly incarcerated people begin or continue their higher education after release from prison or jail, during probation or parole, or while fulfilling alternative-to-incarceration commitments. CI's free services include one-on-one guidance counseling, help with financial aid and college applications, preparation for entrance examinations, textbook stipends, and on-going support and mentoring. CI developed strong contacts with colleges and universities that did not discriminate against people with criminal records. CI's partnership with COPE (College Opportunity to Prepare for Employment) offices on ten City University of New York (CUNY) campuses offers students access to COPE's services including free academic support, transportation assistance, employment counseling and childcare referrals. As an analysis of the data from 2007-08 revealed, CI students performed on par with the general CUNY population, and CI students entering with general equivalency diplomas (GEDs) outpaced average CUNY GED earners. In the 2009-2010 academic year, 315 students enrolled in colleges and universities with 72% majoring in a public service related field. As of June of 2010, 93 students had earned

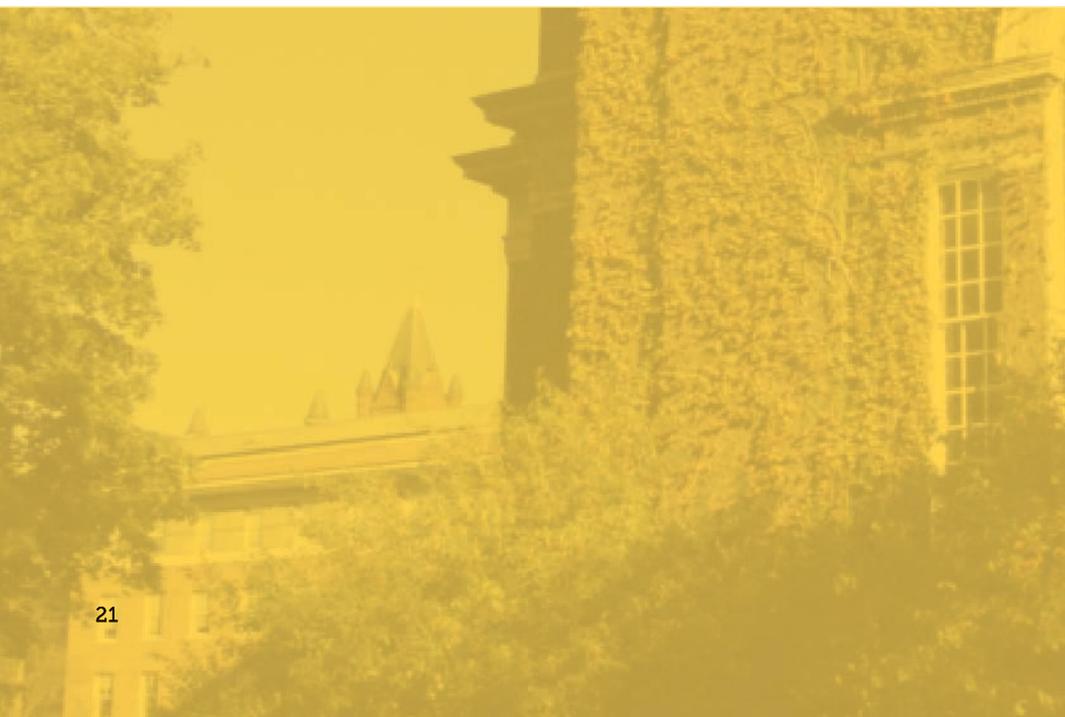
104 degrees (26 associate, 51 bachelors and 27 masters), many with scholarships and academic honors. Ninety-seven percent had no further involvement in the criminal justice system, and of those who did, most faced technical violations of the conditions of their release, not new criminal charges.

Until contacted by CCA for this study, Richard had no idea that some colleges were making it difficult to enroll: *"I was never discouraged from applying to any college because of my criminal history. That said, had I encountered an application with questions about a criminal history, I would have definitely thought twice about applying to that particular college, especially since my own history seemed to make no difference at the colleges that accepted me."* He says of his ability to attend college: *"I'm not exactly starting a college education; I'm finishing one. But it feels fantastic. Honestly, attending college and finishing my BA (and later my master's at the least) feels like a matter of life or death. Not literally, of course, but it is the most important thing I feel I need to do. As I said, I think this is one of the very few ways I can make my history an asset rather than a detriment. I couldn't even get a job at a moving company due to my history. Ironically, I may end up working as a professional in the social justice/prisoner advocacy field largely because of that same history. So it feels great and extremely important."*

Other conditions may apply to enrolled students with criminal records. Thirteen percent of schools that collect CJJ have special registration requirements including ensuring that the student is in compliance with any state registration rules, meeting with a school official, and the entry of the student's name in a special database and/or restrictions on class enrollment. Other special requirements noted in comments provided by responding admissions officers include "providing court documents and recommendations;" "a letter informing us about the issue;" "paying for a criminal background check;" and "housing restrictions." In one follow-up interview, the admissions officer stated that students with criminal records are subject to additional surveillance by campus security and might not be permitted to take courses on campus; instead they are restricted to taking classes online.

Fifty-three schools or 32 percent of the schools that collected CJJ as part of the admissions process reported having restrictions on access to student services. Seventeen (10 percent) noted that such restrictions are handled on a case-by-case basis. Housing restrictions were mentioned by 22 responding colleges and restrictions on work study assignments were mentioned by two respondents. Finally, 6 percent of schools noted that they include an annotation in the student's transcript.

In summary, the survey results show that criminal history screening of college applicants is becoming increasingly common; that people with criminal records are subjected to special admissions screening procedures; that college personnel other than admissions officials often participate in the admissions decision; that a wide range of criminal convictions and even arrests can negatively impact the admissions decision; that failure to disclose a conviction can result in rejection or expulsion; and that even after admission, students with records may be subject to special restrictions. However, the survey also shows that a sizeable minority of schools—38 percent—either do not collect any criminal history information, or if collected, do not use such information in admissions decisions.



## IV. Closing Doors to Higher Education: The Impact of the U.S. Criminal Justice System

The use of CJJ in admissions decisions has to be evaluated in the context of the operation of the criminal justice system in the United States. There are several areas of concern which colleges should consider in determining both the utility of such screening and its impact on particular groups of prospective students.

**Major areas of concern are:**

- 1. The widespread use of the criminal justice system in the U.S. to address social and public health problems;*
- 2. The disproportionate impact of the criminal justice system on people of color; and*
- 3. The prevalence of errors in the reporting or the interpretation of criminal records.*

### **1** Expansive Reach of the Criminal Justice System

There has been a dramatic increase in the reach of criminal sanctions over the past three decades. Behaviors that were formerly addressed in other domains - family, faith community and schools - are now under the purview of the criminal justice system. Criminal justice practitioners and scholars call this phenomenon "widening the net." The enormous number of people under criminal justice control today demonstrates the breadth of this phenomenon: More than 2.3 million people are in jails and prisons, giving the U.S. the highest incarceration rate in the world, and more than 7.3 million people are under some form of correctional supervision (prison, jail, probation, or parole) (Glaze & Bonczar 2009; Pew Center for the States 2009). Two studies by the Pew Center on the States in 2008 and 2009 captured the magnitude of the U.S. criminal justice system. More than one in every 100 adults is currently locked up in the U.S. and an astonishing one in every 31 adults is under some form of correctional control or supervision (Pew Center on the States 2009; Pew Center on the States 2010).

The explosive growth of misdemeanor arrests, prosecutions and convictions is a major reason for the fact that more than 100 million Americans have criminal history records. Misdemeanor cases have more than doubled since the 1970's and now account for 10.5 million cases per year (NACDL 2009). These offenses are relatively petty—a very common misdemeanor charge in many jurisdictions is underage drinking, a not infrequent occurrence on college campuses. Because of the tremendous volume of these cases there is pressure on everyone, including defendants, to enter a guilty plea at the first court appearance, whether or not they committed the crime (NACDL 2009).

In addition to the 100 million people with criminal history records on file in the state repositories as of the end of 2008, another 14 million arrests are made each year (FBI 2009). More than 3 million of the arrests in 2008 were for felonies (SEARCH 2009). The largest category of arrests in 2008 was for drug offenses, which accounted for 1.7 million arrests (FBI 2009). The same FBI report indicated that people of college age (under 25 years old) represented 44.3 percent of the total arrests (FBI 2009). According to the Bureau of Justice Statistics in 2006 alone more than 1.1 million people were convicted of felony-level offenses in state courts, a 37 percent increase from 1990 (Durose et al. 2009). This number does not include felony convictions in federal courts. (Uggen et al. 2006) estimated more than 16 million people in the United States – 7.5 percent of the adult population – had a felony conviction. In practical terms it can now be fairly estimated that more than one in three adults in America have some type of criminal history record – arrest, misdemeanor or felony conviction- on file with state criminal justice agencies (New York State Bar Association 2006).

Not only has the number of people incarcerated expanded dramatically, there has been a corresponding increase in the number of people being released from prison and reentering their communities after being incarcerated. In 2008, over 735,000 people were released from state and federal prison (Sabol, West & Cooper 2009). Many returned home seeking to rebuild their lives through education and employment.

The widening of the net has ensnared millions of people whose behavior would not have been considered criminal in the past. One scholar illustrates the overcriminalization of behavior in the U. S. with a laundry list of crimes that include: maiming oneself to excite sympathy (a felony in the state of Delaware); training a bear to wrestle (a crime in Alabama); failing to return library books (against the law in Utah); frightening pigeons from their nests (an offense in Massachusetts); and spitting in public spaces (a misdemeanor in

Virginia) (Luna 2005). It is difficult to measure the number of crimes that have been added to state penal codes, but an American Bar Association (ABA) study (1998) found that an astonishing 40 percent of federal crimes enacted since the Civil War were passed into law between 1970 and 1998.

Moreover, the labels attached to behaviors can often imply a level of dangerousness not commensurate with the actual deed. In New York State, for example, the theft of a bicycle from a garage attached to a house is classified as a violent crime, even if the theft did not involve actual violence or any interaction with another person, and did not penetrate the actual home itself. In Delaware, students can be criminally charged with the crime of “offensive touching,” which implies some type of sexual assault but typically involves adolescent behavior such as bra snapping or patting someone’s behind.

The efficacy of screening for CJ in the college application context must be considered in light of the fact that in 21st Century America, having a criminal record is no longer an unusual characteristic. Given the sheer numbers involved, it is inevitable that otherwise qualified and deserving applicants are either being rejected or are being discouraged from applying in the first place.

Of added significance is the fact that only a small percentage of people who engage in criminal behavior are arrested, prosecuted and convicted. Many more prospective college students are never arrested, prosecuted as adults or receive adult convictions despite their criminal behavior. A national survey conducted by the National Center for Addiction and Substance Abuse at Columbia University (1994) found that almost half of all full-time college students binge drink and/or abuse prescription and illegal drugs, and a study by the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration found that in the age group, 18-25,

more than one quarter acknowledged marijuana use in the past year. Is it the bad fortune of getting caught and having a criminal conviction that makes one unfit for college admission, or is it the “criminal behavior?” Clearly, screening for criminal convictions when the behavior itself is relatively commonplace does not make college campuses any safer.

**Clearly, screening for criminal convictions when the behavior itself is relatively commonplace does not make college campuses any safer.**



## 2 The Racial Impact of Using Criminal Records in Admissions Screening

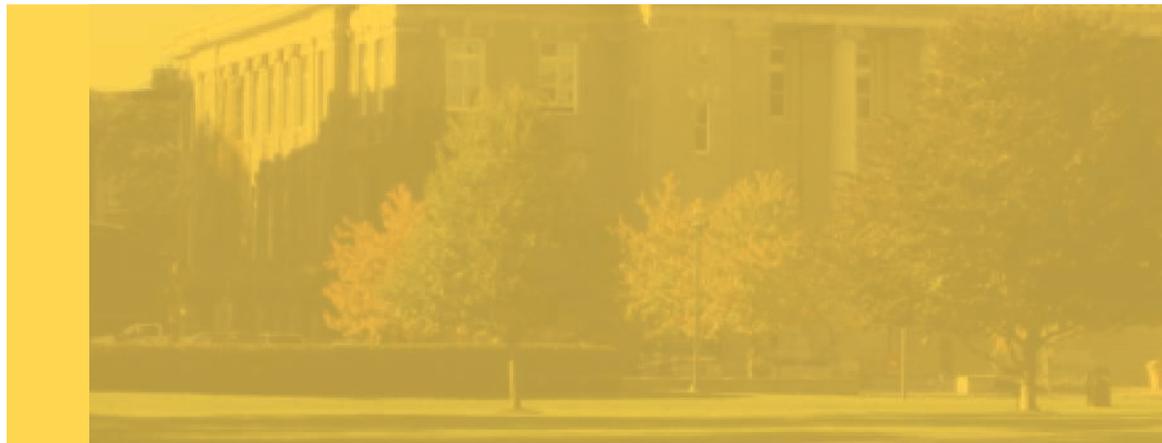
It has now been well-documented that racial disparities infect the entire criminal justice system, from policing to sentencing. Such disparities have been documented in the processing of every type of crime, from juvenile delinquency to low-level misdemeanors to the imposition of the death penalty (Kalegeros 2003; Golub et al. 2007; Mufioz et al. 1998; Dieter 1998; Baldus 1998; Cole 1999). Because racial bias, whether deliberate or inadvertent, occurs at every stage of the criminal justice system, screening for criminal records cannot be a race-neutral practice.

Disparate treatment of young people of color begins in the schools with disproportionate suspensions and in-school arrests--a phenomenon known as "the school-to-prison pipeline" (Wald & Losen 2003; Skiba et al. 2000; Weissman 2008). High levels of police deployment in communities of color combined with racial profiling and "stop and frisk" practices also bring disproportionate numbers of young people of color into the criminal justice system (Markowitz & Jones-Brown 2000; New York Attorney General 1999). As a result, an estimated one in three adult black men has a felony conviction, twelve percent of black men between the ages of sixteen and thirty-four are incarcerated, and more than twice that number are on probation or parole (Uggen et al. 2006; Harrison & Beck 2005; Glaze & Bonczar 2008). In 2004 alone, more than one million people were convicted of felony offenses in state courts, almost 40 percent of whom were African American, far exceeding their 12 percent representation in the U.S. population (Durose & Langan 2007).

Racial disparities are starkly apparent in incarceration rates: Blacks are imprisoned at a rate of 3,218 per 100,000, Latinos at 1,220 per 100,000, and whites at 463 per 100,000 (Glaze & Bonczar 2008). The same Pew Center studies that documented that one in 100 adults were incarcerated and one in 31 adults in the U.S. were under correctional control, dramatically show the racial disparity when controlling for race or gender. One in nine African American males is currently incarcerated while one in eleven African American adults is under correctional supervision. A recent Bureau of Justice Statistics study that analyzed the total incarcerated population at year end 2008 concluded that black males were imprisoned at a rate six and a half times higher than white males (Sabol, West & Cooper 2009). So pervasive is the criminal justice system in the lives of black men that more black men have done prison time than have earned college degrees (Western et al. 2003). This is a national tragedy.

The disparate enforcement of drug laws is a significant contributor to the overrepresentation of African Americans and Latinos in criminal justice statistics. It is well documented that illegal drug use does not differ significantly for whites, blacks or Hispanics (SAMHSA 2007), yet 62 percent of people incarcerated for drug crimes are black (Human Rights Watch 2000). Recent research on marijuana possession arrests shows huge disparities as well. In New York City from 1997 to 2006, marijuana misdemeanor arrestees were 52 percent black, 31 percent Hispanic and 15 percent white, although their population in the City was 26 percent, 27 percent and 36 percent, respectively (Levine and Small 2008). Similar disparities exist throughout the country and are particularly significant here given the prevalence of marijuana use among college-age people. According to government statistics, a higher percentage of white 12th graders and whites between the ages of 18-25 use marijuana than their black and Hispanic counterparts. Yet blacks in particular are arrested for possessing small amounts of marijuana at far higher numbers, and, in many jurisdictions, those arrests result in a guilty plea and a criminal record.

Because so many people of color are caught in the criminal justice system, the imposition of institutional barriers such as admissions policies that screen out people with a criminal record constitute a de facto return to race-based discrimination in higher education. The criminal justice system has created a new divide in the United States. Prior to *Brown v. Board of Education*, 347 U.S. 483 (1954), official discrimination was accepted in many areas of life including education. Today, unofficial discrimination and exclusion are perpetuated and justified under the guise of ostensibly “race-neutral” criminal justice policies and practices.<sup>7</sup>



<sup>7</sup> The use of a criminal record has already had an impact on the ability of low income students, many of whom are students of color, to get a college education. Until 2006, Section 484, Subsection (r) of the 1998 Amendments to the Higher Education Act of 1965 denied or delayed eligibility for financial aid to people with drug convictions. A GAO report (2005) determined that about 20,000 students each year were denied Pell Grants and 30,000-40,000 lost out on student loans because of this federal law. Wheelock and Uggen (2006) concluded, “Relative to Whites, racial and ethnic minorities are significantly more likely to be convicted of disqualifying drug offenses ... and significantly more likely to require a Pell Grant to attend college... It is therefore plausible that tens of thousands have been denied college funding solely on the basis of their conviction status” (p. 23). Thus, while screening of prospective college applicants for criminal records may appear to be race neutral, the racial disparities in the criminal justice system means this practice has the potential of having significant racially exclusionary effects.

### 3 Challenges in Interpreting Criminal Records and Identifying Inaccurate Information

Carla's conviction dates back to 1993 and for many years she has worked to help formerly incarcerated people reintegrate into the community. She recently decided to get a college degree and applied to a local university. Her experience shows the inaccuracy of criminal records: *"My application to a University here in ...Texas has been breaking my heart. My last offense was in 1993 and they will not move forward on my application until I prove that I completed my sentence. I received my background check ... and nowhere does it say 'sentence completed.' I have been waiting over a month now just trying to clear this up and prove that I have served my time. I have been on an emotional roller coaster because it seems that my past will not die, stay dead and remain buried. I will go to District Court tomorrow and try to get something that shows I paid my debt to society."*

For criminal justice policy makers and researchers, not all convictions are alike. There are important distinctions to be made based on the level of crime (e.g. felony, misdemeanor, and noncriminal violation), the individual's status at conviction (e.g., juvenile delinquent, Youthful Offender, Juvenile Offender, adult), the type of crime, and the state laws governing types of convictions or adjudications. There are differences with respect to which, if any, convictions, can be sealed or expunged. There are also differences at the state level regarding the age at which a person is considered an adult for criminal justice purposes. In New York State, for example, anyone 16 years or older is considered an adult for any crime and prosecuted in the adult court system. In contrast, many other states do not prosecute youth as adults until they reach the age of 18. As a result, applicants from different states will answer the same application questions about their criminal history differently, not because of differences in the behavior involved, but because of differences in state criminal and juvenile justice laws and definitions.

Two college applicants from different states, convicted of the very same offense at age 15 could end up with entirely different criminal history records. One could be saddled with an adult felony conviction and the other could end up with no adult criminal record at all. How could an admissions officer possibly fairly compare the two applicants to determine which, if either, posed a future threat to campus safety?

Sealing, expungement, pardons, deferred prosecution, *nolle prosequi*, and Youthful Offender status pose challenges for both the prospective student and the admissions officer trying to assess the student's response on the application for admission. Records that are sealed or expunged, as well as convictions that are covered by "youthful offender" status are not supposed to

be reported by the individual who has such a conviction. Sealed and expunged records are required to be removed from criminal history information. Unfortunately, many people are not made aware of their rights and continue to respond in the affirmative when asked whether they have a criminal record. College admissions officers may not be familiar with what kinds of convictions do not have to be reported and what specific offenses mean, and as a result, may misinterpret CJ included on a college application.

Errors in criminal history records are a major problem in the U.S. Common errors include the failure to report a final disposition in a case, the inclusion of information that should have been sealed, the failure to note Youthful Offender status when applicable, and the misreporting of arrests and convictions. A study by the federal Bureau of Justice Statistics (BJS) noted that many states still do not have the capacity to record dispositions (BJS 2009). A 2001 survey of state criminal history practices conducted by BJS found considerable variation in state procedures for auditing the quality of their criminal justice data: 22 states reported that they had not done an audit in the five years preceding, leading BJS to conclude: *"The issue of the accuracy and completeness of criminal history records was identified as an important concern during the earliest stages of the development of a national criminal history record program. More recently, the data quality issue has emerged as one of the most important and timely issues confronting the criminal justice community. ... In the view of most experts, inadequacies in the accuracy and completeness of criminal history records is the single most serious deficiency affecting the Nation's criminal history record information systems"* (BJS 2001:38). The errors identified included missing, inaccurate, or incomplete information, and audits of various state repositories found error rates that were deemed "unacceptable" (p. 39). The report also noted great dissimilarities in reporting and classification among states and warned that, *"Many of the criminal history records currently circulated by the repositories are difficult to decipher, particularly by noncriminal justice users and out-of-State users"* (p. 42).

Errors regarding Youthful Offender status are particularly relevant in the context of college admissions. Many states as well as the federal government grant certain young people "Youthful Offender" status allowing for more lenient sentencing options and conveying other benefits that protect the young person from the long term negative consequences of a criminal conviction. In New York State, for example, a person who receives Youthful Offender status for a felony or a misdemeanor is legally permitted to answer "No" when asked if he or she has been convicted of a crime. Many people, however, do not know this and may answer "Yes" on college applications. Even more troubling, Youthful Offender convictions are not always properly recorded or sealed and may be accessible through criminal background checks. Thus, for example, an applicant may correctly answer in the negative to a question about a criminal conviction for which she was subsequently adjudicated a Youthful Offender, only to have a college admissions office assume she has falsified her application when a background check erroneously reveals the Youthful Offender adjudication as a criminal conviction.

The prevalence of criminal convictions in the general population and the racial disparities found at all stages of the criminal justice system compounded by the prevalence of errors in criminal history information raise grave concerns about the collection and use of criminal history information in making admissions decisions.

## V. Higher Education and Promotion of Public Safety

Higher education opens doors of opportunity, enhances critical thinking, and leads to better and more stable employment. Studies of recidivism rates of people who attend college while in prison, as well as those with criminal records who attend college following release, show that a college education dramatically reduces recidivism. Post-secondary educational programs have been shown to reduce recidivism by approximately 40 percent (New York State Sentencing Commission 2007). A research brief prepared by the Open Society Institute (1997) reported on a Texas study in which participation in higher education lowered recidivism to 15 percent, 13 percent and under 1 percent for people who earned an associate's, bachelors, and master's degree, respectively. In contrast, the general recidivism rate hovers around 63 percent nationally (Vacca 2004). A study of recidivism rates among women showed that only 7.7 percent of those who took college courses in prison returned to prison after release, compared to 29.9 percent of those who did not participate in the college program (Fine et al. 2001). State-level studies in Texas (Tracy & Johnson, 1994), California (Chase & Dickover 1983), Alabama, and Maryland (Stevens & Ward 1997) have, over the course of many years, shown significant reductions in recidivism associated with higher education in correctional settings.

There is less information about the impact of post-release college education on recidivism. We do know, however, that people with college educations generally have substantially less involvement in the criminal justice system than do people without higher education. U.S. Department of Justice data show that 13 percent of incarcerated people and 24 percent of people on probation had a postsecondary education compared with 48 percent of the general population (Harlow 2003). The College and Community Fellowship, one of a few organizations that works directly with formerly incarcerated individuals who are in college in New York City, has tracked success rates. The program, housed at the City University of New York Graduate Center, has enrolled more than 200 formerly incarcerated people in its first seven years and reports a recidivism rate of less than one percent. None of the students were re-incarcerated (Haberman 2006; College and Community Fellowship 2007).

Higher education is also a pathway to a productive, healthy and fulfilling life. It is strongly associated with improved employment prospects and future earnings. The Center for Labor Market Studies at Northeastern University found a clear relationship between employment rates and level of education for African Americans. Higher education significantly increases employment rates among African Americans with 86 percent of college educated African Americans employed compared to 57 percent of high school graduates and a mere 33 percent of high school dropouts (Sum et al. 2007).

At least eight out of ten of the fastest growing jobs in the U.S. require some postsecondary education (U.S. Department of Education 2003). A college graduate is expected to earn more than twice as much as a high school dropout, and even one year of college is estimated to increase lifetime earnings by 5 to 15 percent (National Governor's Association 2003). The median earnings for full-time employees were \$28,800 for a person with a high school diploma compared to \$46,300 for a person with a bachelor's degree. Increases in annual earnings associated with higher levels of formal education persist throughout a person's lifetime. The U.S. Census Bureau reports that the lifetime earnings for people with a high school diploma are \$1.2 million, compared to \$2.1 million for people who obtain a bachelor's degree.

There are larger social benefits associated with increases in higher education - ranging from the expansion of knowledge to helping people become better parents, more informed voters and more engaged citizens (Joint Economic Committee in January 2000). Colleges and universities promote public safety in the larger community when they open their doors to people with criminal records who demonstrate the commitment and qualifications to pursue a college education.

**At least eight out of ten of the fastest growing jobs in the U.S. require some postsecondary education (U.S. Department of Education 2003).**

## VI. Recommendations for Reintegrative Justice: Making College Accessible to People with Criminal Records

The role of education in American society was eloquently stated by Chief Justice Earl Warren in the historic *Brown v. Board of Education* decision:<sup>8</sup>

*It [education] is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. (Brown, 347 U.S. at 493).*

Rather than excluding people with criminal records, colleges and universities can fulfill their commitment to equal opportunity and contribute to a stronger and safer future for the country by welcoming otherwise qualified students with criminal records into their ranks, and, where appropriate, offering support services.



31 <sup>8</sup> The principles of *Brown v. Board of Education* were extended to institutions of higher education in 1956 in *Hawkins v. Board of Control*, 350 U.S. 413,414.

# Recommendation:

## **Colleges and universities should refrain from engaging in CJI screening.**

Almost 40 percent of the colleges and universities surveyed do not use CJI in their application process and there was no indication from the survey results or other data that those campuses are any less safe than those that do use CJI. This is not surprising given what we know about the lack of any demonstrable link between campus safety and students with criminal records. There is no evidence that screening for criminal histories increases campus safety, nor is there any evidence suggesting that students with criminal records commit crimes on campus in any way or rate that differs from students without criminal records. On the contrary, the Olszewska study leads to the conclusion that the practice of inquiring into applicants' criminal background, school judicial background, and military discharge information may not be an effective means of reducing campus crime because there is no statistically significant difference in the rate of campus crime between institutions of higher education that explore undergraduate applicants' disciplinary background and those that do not (Olszewska 2007). There is, however, considerable evidence that using CJI as part of the college admissions screening process will disproportionately impact young men and women of color. There is also evidence that obtaining a college education greatly reduces the likelihood of recidivism and improves a range of life outcomes from employment, to health and mental health functioning. Because broad access to higher education is good for public safety and the economic growth and well-being of the country as a whole, colleges and universities should refrain from engaging in CJI screening.

## Secondary Recommendations:

If an institution continues to perform CJ screening, it should adopt policies and procedures that will help mitigate the negative effects of such screening. The policy should be fair and consistent and should be formalized in writing so that all staff know what the policy is and do not consider criminal convictions outside of the written guidelines. A written policy will also make the process more transparent and will give notice to prospective students so that they are aware of what will be required to gain admission to the school.

Policies and their outcomes should be evaluated periodically through data collection and analysis to determine whether using CJ in college admissions decisions is actually necessary. We suspect that through the collection of data regarding incoming students and their behavior while on campus, admissions officers will discover that the crime rate while on campus is no higher for students with prior criminal records than it is for other students. Such a finding would lead to the conclusion that criminal history screening is not predictive of future behavior on a college campus, and is costly, time-consuming, and counter-productive.

### **1. Remove CJ disclosure requirement from initial application for admission.**

Disclosure should be required only after the initial admission decision is made. All applicants who have received a conditional offer of acceptance can be sent an inquiry about any felony convictions within the preceding five years (see recommendation 2 below). Limiting CJ inquiries to applicants who have been admitted ensures that those with records are considered for admission under the same criteria as all other applicants. It also reduces the likelihood that qualified and deserving individuals with criminal records will be discouraged from applying. Limiting the number of records that admissions staff must review and investigate to applicants who are conditionally admitted will allow them to spend more time evaluating the individual circumstances of college applicants with a criminal record.

## 2. Limit disclosure requirement to specific types of convictions.

### a) Only convictions for felonies, not misdemeanors or infractions.

Misdemeanor convictions, which rarely involve incarceration and which, as noted in Section IV, have dramatically increased in number over the past decade, should not be included in any disclosure requirements. Convicted misdemeanants are commonly accused of offenses such as underage drinking, turnstyle jumping, dog leash violations, and driving without a license—offenses which do not have any impact on public safety.

### b) Only felony convictions imposed within the past five years.

This limitation is supported by research showing that with time, a person with a criminal record is no more likely to commit a crime than a person without a criminal record. Depending on the offense and the age at which it was committed, after the passage of 4½ to 8 years, if no further arrests have taken place, an individual has a minimal risk of re-offending (Blumstein & Nakamura 2009).

### c) Only convictions for felonies that were committed after the individual's nineteenth birthday.

States differ with respect to the age at which an individual can be prosecuted as a juvenile as opposed to an adult. A fourteen-year-old in one state might be prosecuted as an adult and end up with a criminal record while a seventeen-year-old in another state might be prosecuted as a juvenile for the same offense and end up with a clean slate. In addition, states confer various forms of Youthful Offender adjudications which remove criminal convictions from the records of young people between the ages of thirteen and twenty-two, depending on the state. Because of the lack of uniformity it is nearly impossible to compare the records of applicants from different states in a way that is fair and equitable. A viable solution is to limit disclosure to convictions for felonies committed after age nineteen. This acknowledges the rationale underlying the distinction between adult and juvenile criminal processes: society's recognition that crimes committed before a certain age are the result of immature behavior not likely to be repeated with age and maturity, and society's commitment to the idea that an individual who commits a criminal act as a juvenile is more amenable to rehabilitation (ABA Resolution 102A February 2010).



### 3. Establish admissions criteria that are fair and evidence-based.

**a) Remove barriers to admission of individuals who are under some form of community supervision.**

Terms of community supervision (probation) vary depending upon state law and state and local early discharge policies and practices. In some jurisdictions community supervision extends over five years, ten years, or a lifetime. Barring college admission in such cases is therefore tantamount to a policy of blanket denial. Terms of supervision also vary depending on the nature of the criminal conviction. Colleges and universities should regard community supervision as an added support that will help the student be successful rather than as a bar to admission.

**b) Avoid policies that impose blanket denials for particular crimes.**

Admissions officers should refrain from imposing a policy that creates a blanket denial for any type of offense. Careful individual evaluation should be undertaken in every case where a criminal conviction is considered as a factor for admission.

**c) Provide an opportunity to document personal growth and rehabilitation.**

Applicants who have disclosed a criminal record should be encouraged to provide information about their rehabilitation, including, but not limited to:

- a copy of the certificate of disposition from the court in which the conviction occurred along with a personal statement explaining the circumstances surrounding the conviction, the lessons learned, insights gained and personal changes that have occurred since the conviction;
- letters of recommendation from any individual who may be able to speak to the applicant's rehabilitation or good conduct since the conviction;
- documents showing the applicant's participation in or successful completion of programming while incarcerated;
- documents showing the applicant's participation in any re-entry program upon release, including vocational and training achievements;
- documents showing the applicant's participation in a community service program or showing community service achievements;
- documents showing participation in or successful completion of a substance abuse, anger management, domestic violence, or other program;
- letters or documents regarding any work experience the applicant may have had;
- a Certificate of Rehabilitation, Certificate of Relief from Disabilities, Certificate of Good Conduct, Pardon, or like document.

**d) Avoid requiring applicant to produce his “official” criminal history record information.**

When an individual requests his or her own criminal history record information from the state central repository this information is private. In some states the information on the record includes information that cannot be disclosed to the public, including employers and educational institutions. It may include information that has been legally sealed, expunged or is confidential under state law. In some cases it contains information that the applicant cannot legally be required to disclose. If an admissions officer wants to know about any criminal convictions, disclosure of a certificate of disposition should be sufficient and will avoid disclosure of otherwise confidential information.

**4. Base admissions decisions on assessments that are well-informed and unbiased.**

**a) Develop in-house expertise.**

Admissions offices should institute a training program to equip staff to interpret criminal records, including differences among the states in how they define specific crimes and reportable offenses. Staff should be familiar with the research on disparities in the criminal justice system and the link between higher education and desistance from crime and should keep abreast of new information regarding collateral consequences of a criminal conviction. Admission officers may find it helpful to develop a decision-making panel with a broad range of expertise. Conferring veto power upon any one individual, on the other hand, should be avoided.



**b) Perform an assessment and multi-factor analysis to determine whether a past criminal offense justifies rejection.**

It is not enough to conclude that a criminal record reflects a “poor moral character.” Rather, there should be a direct relationship between the specific circumstances surrounding the criminal conviction and the individual’s status as a student. If there is something about the person’s criminal record that gives rise to a concern that he or she will engage in criminal activity as a student, then it is appropriate to refuse or defer admission. But each case should be individually assessed in the context of the person’s desire to be a college student and a multi-factor analysis should be done to determine (a) whether or not there is a high probability that the person will re-offend on campus and (b) whether the denial of admission will undermine public policy.

The following factors should be considered:

- The age of the person at the time of the criminal offense and how much time has elapsed since its occurrence;
- The nature of the offense and whether it bears a direct relationship to the person’s status as a student;
- Whether the person is more likely to engage in future criminal conduct than similarly situated students who do not have a criminal record based on information submitted regarding rehabilitation and the low risk of re-offending (see below);
- Whether the institution’s legitimate interest in protecting property, safety and the welfare of the college community will be put at risk if the person is admitted;
- Whether a negative decision would undermine important public and institutional policies, such as:
  - promoting equal access to educational opportunity and preventing the exclusion of people of color who are disproportionately represented in the criminal justice population because of racial profiling and other discriminatory practices;
  - promoting campus diversity;
  - supporting rehabilitation and public safety by offering the benefits of higher education known to improve life chances and reduce recidivism.

**c) Failure to disclose should not be the grounds for automatic rescission of an offer of admission or expulsion.**

Given the confusion that characterizes criminal record-keeping and the uncertainty about one’s rights and responsibilities to disclose or not disclose a record, college admissions officials should not assume that students have deliberately lied. The student or applicant should be afforded a chance to explain his or her understanding of what was asked and answered. This should be reviewed by the staff with expertise in understanding criminal history information.

## **5. Establish procedures that are transparent and consistent with due process.**

### **a) Inform students of the reason for the withdrawal of an offer of admission.**

Colleges and universities should be transparent about informing applicants that their criminal record was the reason for rejection or withdrawal of admission. Transparency will help prevent admissions decisions based on inaccuracies endemic to criminal justice record-keeping in the U.S. The applicant should be given the opportunity to correct a mistake in the criminal history record or background check that may have led to the incorrect assumption that the applicant failed to disclose a past conviction, and to explain the basis for their original response.

### **b) Applicants should be afforded the right of appeal.**

The appeals process should be designed to encourage applicants to pursue admission rather than to discourage further efforts to enroll. An admissions professional trained in criminal justice issues will be able to assist applicants with criminal records in providing the documentation and information needed for reconsideration.

## **6. Offer support and advocacy.**

### **a) Provide on-campus support services for students who have criminal records.**

Access to a range of support services will increase a student's chance to succeed and lessen the potential for harassment or surveillance. Colleges can develop their own program or partner with service organizations with a proven record of success. Model programs include the College Initiative which helps people enroll in college following their release from prison, the College and Community Fellowship Program housed at the City University of New York which provides mentoring, tuition and academic support to help formerly incarcerated women make the transition to academic life, and Project Rebound, which operates out of San Francisco State University and provides counseling on balancing academic responsibilities with the responsibilities of the parole or probation process, and assists with tutoring, financial aid, and financial supports that help defray the cost of books, transportation and meals.

### **b) Provide information and assistance when a prospective student's chosen field bars individuals with criminal records.**

Rather than discouraging students from entering a profession which prohibits the licensing or certification of individuals with criminal records, colleges should inform such students about ways to overcome those barriers, such as administrative waivers, certificates of rehabilitation and other forms of advocacy. In this way, students will be informed about potential barriers but not discouraged from pursuing a course of study that may lead to the desired career goal. We further recommend that colleges and universities become proactive in convincing licensing boards and other professional certification entities that students with past criminal records who successfully complete a course of study and have been positive members of the campus community should not face bars to employment for which they are otherwise qualified.

## Programs that Work

The College Initiative (CI) was founded in 2002 by an educator with years of experience developing in-prison college programs. The loss of Federal Pell and New York State TAP grants for prisoners in 1994-1995 (primary funding source for higher education program in prisons until that time) was a motivating factor in her decision to address the critical need for access to higher education for people in reentry. CI is a project of the Fund for the City of New York with offices at The Fortune Society's headquarters in Long Island City and LaGuardia Community College, both located in Long Island City, Queens. CI is part of the CUNY-wide Black Male Initiative and works in collaboration with College Opportunity to Prepare for Employment (COPE) on ten CUNY campuses. To help ease the return to school, CI offers fall, spring and intensive summer College Prep Program. Additionally, most new enrollees are paired with successful CI students who are trained as peer mentors. In its first four years, the Initiative helped 167 former state prisoners enroll in 27 different colleges and universities in New York. The Initiative offers a preparatory program called "Bridge to College" that helps students, most of whom have been out of school for many years, refresh their verbal and math skills. The College and Community Fellowship Program (CCF), a not-for-profit organization, is housed at the City University of New York. It provides mentoring, tuition and academic support to help formerly incarcerated women make the transition to academic life. It provides a small stipend to participants each semester as well as an array of

social supports to help participants address other facets of reentry including family reunification, and balancing school, family and work. Between 2000 and 2008, 234 people have enrolled in college through CCF. To date, 14 women have earned Associate's degrees, 49 have earned Bachelor's degrees, 30 were awarded Master's degrees, and one participant has earned a Doctoral degree. The recidivism rate among participants is less than one percent. Project Rebound, one of the nation's oldest higher educational support programs for formerly incarcerated people, was founded in 1967 by the late Professor John Irwin, a noted criminologist and formerly incarcerated person. The project operates out of San Francisco State University providing special admissions services for people with criminal records (people leaving jail and prison and people in pre-trial court diversion). The program provides counseling on balancing academic responsibilities with the responsibilities of parole or probation, making the transition from a secure institution to academia, and orienting new students to the rules of the university. Finally, the Second Chance Program is a part of the City College of San Francisco and recruits, enrolls, and supports people with criminal records in pursuing an academic degree. It orients students to colleges, helps them negotiate the registration process, and assists with tutoring, financial aid, and financial supports that help defray the cost of books, transportation and meals.

## **7. Evaluate the policy periodically to determine whether it is justified.**

Colleges and universities that screen for criminal records should begin to collect the data necessary to analyze whether students with a prior criminal record are any more likely to commit a criminal offense when enrolled as a student than their counterparts who do not have criminal records. There are no existing empirical data indicating that a campus is made safer by criminal history screening. If screening does not, in fact, help in the prediction of increased rates of criminal behavior, then it serves little purpose. It is both unfair and unwise to continue to screen for criminal records if it does not serve any legitimate purpose and may have adverse impact.





## VII. Conclusion

There is growing support for returning higher education to correctional facilities. The Second Chance Act, which passed Congress on March 11, 2008, and the Senate and House versions of H.R. 4137, the College Opportunity and Affordability Act of 2007 all include provisions that improve access to higher education for people during their incarceration. It is ironic that as the doors to higher education are reopening in prisons, they are closing on the outside. Given what we know about the commission of serious crimes on campus— that they are most often committed by students without criminal records - excluding people with records from attending college will only serve to create a false sense of security.

Sensible and proven measures to increase campus safety include education and discussion among students on campus about excessive use of alcohol, education about what constitutes healthy and consensual sexual relationships, campus-wide responses to hate crimes, and making changes to the physical environment of a college such as improving security in dormitories. Barring people with criminal records from attending college does not improve campus safety, but does undermine public safety in the larger community. Finally, because of the enormous racial disparities found at every stage of the country's criminal justice system, policies and practices that exclude people with criminal records from institutions of higher learning are a setback to the gains earned through the long and arduous struggle of civil rights activists to open higher education to all people, regardless of race or ethnicity.

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