



RESEARCH AND ADVOCACY FOR REFORM

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The Sentencing Project

In support of H.3420/S.825

Joint Committee on the Judiciary

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Established in 1986, The Sentencing Project works for fair and effective U.S. criminal and juvenile justice systems by promoting reforms in sentencing policy and addressing unjust racial disparities. We are grateful for this opportunity to submit testimony to the Joint Committee on the Judiciary.

The Sentencing Project (TSP) supports the inclusion of 18-, 19- and 20-year olds under the jurisdiction of Massachusetts's juvenile courts. Though TSP supports H.3420/S.825 for several reasons, this testimony is limited to issues surrounding collateral consequences of conviction in Massachusetts as a strong rationale in support of raising the age.

OVERVIEW

The American Bar Association and the Council of State Governments have found 1,693 collateral consequences of conviction in Massachusetts, 752 of them created under the Commonwealth's constitution, laws and regulations. The remainder are federal.¹

Collateral consequences are wide-ranging, impacting jobs and housing, loan eligibility and civic participation. They exist beyond the bounds of the legal system, punishing people for having been punished. For older adolescents, raising the age of juvenile court jurisdiction means that the mistakes of their youth will not carry additional lifelong burdens.

MOST COLLATERAL CONSEQUENCES ARE PERMANENT

Of these 752 Massachusetts-specific consequences, 507 are permanent and 289 are mandatory,² demonstrating the long and certain impact of a conviction beyond the immediate punishments of the courts. That said, it is important to note that some of these 752 consequences are narrowly tailored. For example, people convicted of bribery are permanently banned from serving in public office in Massachusetts under its Constitution (Pt. 2, Ch. VI, Art. II). That is not the issue at hand, since the most common reasons that emerging adults enter the justice system are arrests for drug possession, larceny, and simple assault, a pattern remarkably similar to that of younger adolescents.³

Collateral consequences are typically far more wide-ranging than the aforementioned bribery provision would suggest. Massachusetts bans a person convicted of a felony from receiving a license to operate Keno (ALM GL ch. 10, § 27A), receiving an auctioneer's license (ALM GL ch. 100, § 4), becoming an architect (ALM GL ch. 112, § 60B) or working as a manager of an assisted living facility (ALM GL ch. 112, § 60B). These are some of the 79 mandatory and permanent consequences of a felony conviction. They demonstrate how mistakes in one's youth can harm career opportunities for a lifetime in a way that a 19-year old would not expect.

¹ This testimony relies on the National Inventory of Collateral Consequences of Conviction, created by the American Bar Association and updated by the Council of State Governments. That information is available online at <https://niccc.csgjusticecenter.org/>.

² In fact, 213 of Massachusetts's collateral consequences are both permanent and mandatory.

³ United States Department of Justice, Federal Bureau of Investigation. (Fall 2019). Crime in the United States, 2018. Table 38 (Arrests by Age, 2018). Retrieved Nov. 15, 2019, from <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-38>

COLLATERAL CONSEQUENCES ALSO APPLY TO MISDEMEANORS

Yet collateral consequences are not limited to felony convictions. There are 209 collateral consequences for misdemeanor convictions, 45 of these mandatory and permanent. For example, a person with a misdemeanor conviction cannot work as a marriage and family therapist, rehabilitation counselor, or mental health counselor (ALM GL ch. 112, § 165) or for the state police ALM GL ch. 22C, § 14). One can easily conceive how many people who made mistakes -- even serious mistakes -- in their youth would be especially qualified to work as mental health or public safety professionals, but Massachusetts's laws exclude them from doing so.

IMPACT ON EMPLOYMENT

Most collateral consequences relate to employment and the ability to obtain employment. Under CSG's categorization, 515 collateral consequences are categorized as either (a) business licensure and participation; (b) employment and volunteering; (c) government contracting and program participation or (d) occupational and professional licensure and certification. This should concern the General Court because efforts to obtain and maintain employment for justice-involved persons is already hampered by societal biases against people with convictions. The late Harvard sociologist Devah Pager found, not surprisingly, that people with criminal records are less likely to receive callbacks for job interviews than those without. This result held true for white applicants (who were 50 percent less likely to receive a callback for a job interview if they had a criminal conviction) and black applicants (who were 65 percent less likely to receive a callback for a job interview if they had a criminal conviction.)⁴

In short, people with criminal records will find it hard to find employment even without state laws further limiting their career choices. Moreover, people with criminal convictions also face discrimination beyond the job market, such as in the private rental market.⁵

Employment consequences can extend to one's family. A person convicted of a felony or misdemeanor cannot reside in a home with a child care business in it (102 CMR 1.05). This provision is personal to me; my wife operated a child care facility out of our home in Maryland before our children were old enough for kindergarten. As with many families, we were unable to find adequate child care for our children at a reasonable price. Though I do not have a criminal record, I have certainly broken laws in my life (specifically during my college years). A conviction 10 years before we met could have denied my wife a career path (and my children excellent child care) due to my own youthful errors.

⁴ Pager, D. (2007). *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*. Chicago, IL: University of Chicago Press.

⁵ Pinard, M. (2013). *Criminal Records, Race and Redemption*. *New York University Journal of Legislation & Public Policy*, 16: 963-997.

RACIAL DISPARITIES IN CONVICTIONS LEAD TO RACIAL DISPARITIES POST-CONVICTION

One cannot address collateral consequences without noting the vast racial and ethnic disparities that pervade our justice system.⁶ People of color are more likely to be arrested for similar behaviors as white people, and are more likely to be treated harshly by the criminal justice system when convicted. Massachusetts imprisons African Americans at 7.5 times the rate of whites and ranks first in the country in its Hispanic-white disparity of imprisonment (4.3 times).⁷ Collateral consequences burden all people convicted of crimes, but that burden falls disproportionately on people of color.

CONCLUSION

The Sentencing Project is thankful for the opportunity to submit this testimony; we are eager to see a robust recommendation to expand the jurisdiction of Massachusetts's juvenile courts.

⁶ The Sentencing Project (Apr. 2018). Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System. Online: <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

⁷ Nellis, A. (2016). The Color of Justice: Racial and Ethnic Disparity in State Prisons. Online. Available: <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>