

**Why So Serious?
An Evaluation of State Collateral Consequence Policy in Pennsylvania and
Texas**

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ABSTRACT

In an era of mass incarceration, many policymakers attempt to intervene on the sentencing level with the aim of reducing prison overcrowding. While effective, this approach ignores the process of societal reentry. Many barriers to reentry exist including societal stigma and bureaucratic barriers; additionally, state and federal statutes trigger lifetime bans on welfare programs for ex-offenders, disqualify them from many career paths, and restrict access to public housing. Many scholars refer to these formal barriers to reentry as collateral consequences to criminal convictions. Because of these formal consequences instituted on the state and federal levels, many ex-offenders are unable to successfully reenter society and live a crime-free life.

Collateral consequences of conviction have largely been ignored in conversations regarding recidivism rates. My research highlights how discretionary implementation in two different states, Texas and Pennsylvania, affects recidivism rates. The bulk of research comes from examining existing federal and state statutes as well as data on recidivism rates.

Overall, I found that more stringent collateral consequence sanctions have a significant impact on recidivism rates in Texas and Pennsylvania. Triggered by statutes and current legislation, I recommend legislative action and implementation on the state and federal level. If policymakers want to facilitate better outcomes upon release and lower the likelihood of increased recidivism, they must be committed to combating the collateral consequences of convictions.

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INTRODUCTION

All Amanda Spillane desired was a fresh start. After a troubled childhood plagued with drug abuse, she was sentenced to two years in prison for possession. Upon release, her goal was to start fresh and enter into the workforce. Amanda began working a full-time job in the restaurant industry and spent her nights attending cosmetology school in hopes of becoming a beautician. However, when she applied for her cosmetology license, the Pennsylvania Board of Cosmetology denied her application, asserting that she was unfit due to a lack of “good moral character.” And with the opportunity for a successful stable career stripped away from her, she turned back to many of the dangerous behaviors and activities that had caused her initial incarceration.¹ Stories like Amanda’s are not uncommon. Pennsylvania law employs the arbitrary “good moral character” requirement for thousands of jobs ranging from cosmetology to landscaping.² Beyond Pennsylvania, these laws that limit employment opportunities for the previously incarcerated plague the criminal justice system across the United States. In Ohio, ex-convicts convicted of crimes unrelated to driving may have their driver’s license revoked upon conviction.³

Besides the stigma of a prison sentence, our criminal justice system creates a multitude of barriers for ex-offenders, making reentry, and societal integration incredibly difficult. Upon reentry many previously incarcerated individuals are limited in their access to important life domains such as jobs and housing, isolating them into a status as “second class citizens” forever

¹ <https://ij.org/case/pennsylvania-collateral-consequences/>

² Ibid 2.

³Malcolm, J. (n.d.). Being an Ex-Offender is Tough Enough. Retrieved December 11, 2019, from The Heritage Foundation website: <https://www.heritage.org/crime-and-justice/commentary/being-ex-offender-tough-enough>

with limited opportunity for upward mobility. This stigma and isolation can have many damaging effects, affecting the social status, psychological well-being, and physical health of those hoping for a successful reentry into society.

These stigmas can seriously affect hiring desirability for the previously incarcerated, as employers may be less likely to hire someone with a criminal record, no matter the offense because of assumptions about their background, morals, and values. The stigmas surrounding incarceration can also impact community adjustment and reintegration, as prior offenders may face communities who are not interested in or are fearful of welcoming them into their spaces. These socially constructed barriers to reentry are only reinforced and made worse by the legal barrier that the previously incarcerated face across this country. Over 48,000 laws and regulations restrict the activities of convicts; with local ordinances imposing thousands of additional restrictions.⁴ These laws and ordinances include public access to criminal records, restrictions on welfare programs, housing, student loans, employment eligibility, driver's licenses, and more. These restrictions are known as consequences of convictions (as opposed to the direct consequences, i.e. prison) and are applied on the federal, state, and local levels. Considering this scope, there is much variability in their implementation. For example, in Pennsylvania, there are over 800 state collateral consequence statutes that affect reentry while in Texas, there are more than 1,500.⁵ There are also additional federal level statutes that apply to all 50 states. Using both Texas and Pennsylvania as case studies, my research will examine the severity of these statutes and their implications on societal reentry of felon populations.

⁴ Malcom 2.

⁵ NICC

Prohibitions against felons possessing firearms or against convicted sex offenders being near school campuses fall under the narrative that the purpose of these typed of laws and ordinances is to ensure public safety, many laws seem designed to further punish the previously incarcerated even when they pose no serious threat to society. However, collateral consequences have very low visibility, as they are not explicitly stated upon conviction.⁶ Given this, it is unlikely that they are acting as a deterrent.

While some offenders may not re-offend, these laws appear to harm recidivism rates. In the United States, more than 650,000 people are released from state and federal prisons every year. According to data from the Bureau of Justice Statistics, among the 650,000 prisoners released every year about two-thirds of them are rearrested within three years of their release.⁷ In this paper I will explore state and federal statutes relating to employment, housing opportunities, and welfare benefits due to several factors that I will explain in my analysis. As I will explore in the literature review, there is much scholarship related to having access to these factors and recidivism rates; this indicates that support from the legislators in reducing barriers could be influential to the reentry process. Because of the rise in mass incarceration and overcrowding prisons, state and federal jurisdiction are interested in successful reentry and reducing recidivism rates. In Texas, for example, 46% of felons recidivate within 3-years of being released. Over the past decade the state has acted to reduce these rates through the creation of alternate prison facilities for lower-level felony offenders. However, these new facilities were plagued with even higher recidivism rates of 63%.⁸ Pennsylvania experiences similar rates, with around 50% of felons recidivating within 3-

⁶ Pinard, M. "Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Identity," University of Maryland School of Law (2010): 475-476.

⁷ Alper, M. (2018). *2018 Update on Prisoner Recidivism: A 9-year Follow-up Period (2005-2014)*. BJS. 24.

⁸ *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*. (2013).

years of being released.⁹ Since the reduction of collateral consequence laws may be able to aid in reentry, there is a need for additional empirical research on whether these laws influence recidivism rates.

From here, my research questions build off of one another to provide a baseline understanding of societal reentry and collateral consequence laws (on the state and federal levels) in Texas and Pennsylvania, to deduce any correlations between these laws and recidivism rates among state felons and to explore how legislators can impact reentry. First, what are the barriers created by collateral consequences relating to employment, housing opportunities, and welfare benefits that impact felon reentry in Texas and Pennsylvania? By examining this question, I hope to discover the challenges that these felons face when attempting reentry. Second, to what extent do collateral consequence laws influence recidivism rates for adult felony offenders from 2013 to 2015 in these two states? Through this, I aim to determine the magnitude of the collateral consequences and their relations to recidivism rates in both states.

If we assume that there is a connection between collateral consequence laws and recidivism rates, the final portion of my analysis will focus on how the Texas Department of Corrections and the Pennsylvania Department of Corrections can reform legislation to combat the barriers to felon reentry created by their respective collateral consequence laws. This section of the analysis will focus on policy recommendations and whether or not it is plausible to mitigate my findings.

⁹ *Pennsylvania Department of Corrections Recidivism Report* (2013).

LITERATURE REVIEW¹⁰

Since my research explores connections between societal reentry of ex-criminals and federal/state programming, my literature review includes an overview of scholarship related to the emergence of collateral consequences in the United States, collateral consequences in the context of a mass incarceration era, and connections between collateral consequences and recidivism rates.

Historical Emergence of Collateral Consequences

Historically, collateral consequences in the United States can be traced back to what scholar Gabriel Chin deems as the English and American institution of “civil death,” a form of punishment associated with treason or felony convictions.¹¹ Indicating the complete loss of citizen privileges and rights (or the reduced status of criminals), the institution rooted in English common law, never completely infiltrated America’s laws (as it only existed if authorized by a statute).¹² Upheld by American courts from as early as 1880, the punishment mandated that a person convicted would be “placed in a state of attainder... and [faced with] three principal incidents consequent upon an attainder for treason or felony, —forfeiture, corruption of blood, and an extinction of civil rights, more or less complete, which was denominated civil death.”¹³ Considering the United States’ historical ties to England, our Constitution provides that “The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person Attained,” thus conceptualizing civil death as the attainder of treason.¹⁴ Here, the term attainder indicates a

¹⁰ This literature review is an expansion upon a previous short paper cited below:

Beamer, W. (2018) *Do the Aims Reflect the Consequences? An Evaluation of Collateral Consequence Policy in the U.S. and Canadian Welfare States*. Unpublished Manuscript, University of Chicago.

¹¹ Chin, Gabriel. “The New Civil Death: Rethinking Punishment in the Era of Mass Conviction,” *University of Pennsylvania Law Review*, 160, no 1789 (2012): 1793.

¹² Chin, Gabriel. “The New Civil Death: Rethinking Punishment in the Era of Mass Conviction,” *University of Pennsylvania Law Review*, 160, no 1789 (2012): 1790-1832.

¹³ *Avery v. Everett*, 18 N.E. 148, 150 (N.Y. 1888)

¹⁴ U.S. CONST. art. III, § 3, cl. 2

punishment through legislative acts not only restricted by a judicial trial.¹⁵ By the 19th century, the concept of civil death began to gain criticism from legal scholars and officials. Citing it as a “violation of the rudimentary conceptions of the rights of the citizen,” the Supreme Court denounced the practice.¹⁶

With this push away from harsh criminal punishments came a new wave of sentencing proportionality and more understanding of offender penances.¹⁷ Mainstream legal authorities began to denounce collateral consequences, promising better approaches. As reported by scholar Margaret Love, the 1960’s called for the wholesale reform of “the system of disabilities and disqualifications that has grown up, thus favoring an informed and restrained exercise of discretion.”¹⁸ Despite these efforts, dissenting opinions and remnants of civil death continued to impact the justice system. In 1960, Supreme Court Justice Earl Warren stated that “conviction of a felony imposes a status upon a person which not only makes him vulnerable to future sanctions through new civil disability statutes, but which also seriously affects his reputation and economic opportunities.”¹⁹

The Justice’s observations, although at the time seemingly antiquated, are reflective of modern era convict relations. The 1980s saw the rise of incarceration rates stemming from the “war on drugs” and “tough on crime” movements, leading to record numbers of individuals incarcerated for nonviolent offenses, especially drug crimes.²⁰ Mauer and King of The Sentencing Project report that the war, a response to the problem of drug abuse emphasizing punishment over

¹⁵ *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 323-24 (1866)

¹⁶ *Hovey v. Elliott*, 167 U.S. 409, 444 (1897)

¹⁷ *Chin* 1793.

¹⁸ Love, Margaret. “When the Punishment Doesn’t Fit the Crime: Reinventing Forgiveness in Unforgiving Times,” *Perceptions of Punishment*, vol.38 (2011): 1-16.

¹⁹ *Parker v. Ellis*, 362 U.S. 574, 593-94 (1960)

²⁰ *Pinard* 531.

treatment, had a disproportionate impact on low-income minority communities both in terms of sanctions and stigma.²¹ Regarded by Love as the “modern civil death,” these increased sanctions or collateral consequences proved to be a retreat from the optimistic period beforehand.²² Historically the term considered a person “dead” within the context of the law, but since the 1980s push, it can best be attributed to a person’s character and livelihood. Now codified in federal, state, and local statutes, collateral consequences subject ex-convicts to permanent ineligible for many government welfare programs such as public housing, a driver’s license, student loans, insurance.²³

In regards to the correctional system and its history of punitive sanctions, it appears to be motivated by five main goals of punishment. As outlined by Jean-Paul Brodeur, the criminal justice system relies on various cases of criminal law: retribution, deterrence, incapacitation, rehabilitation, and restoration. Furthermore, retribution is described as punishing criminals as vengeance for their wrongdoings, deterrence is the discouragement of criminal behavior, incapacitation is to protect the public from the criminal activity, rehabilitation is an effort to transform offenders, and restoration is repairing any damage done to a criminal.²⁴ Despite these rehabilitative and restoration focuses, the consequences are harsh and reflective of the intent to punish individuals during the “war on drugs” era.

In *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe*, James Whitman further comments on the history of criminal punishment in America. Attempting to explain the harsh nature of the country’s policies, the author argues that the penal

²¹ King, Ryan. Mauer, Marc. “A 25-Year Quagmire: The War on Drugs and Its Impact on American Society,” *The Sentencing Project* (2007).

²² Love 4.

²³ Pinard 478.

²⁴ Brodeur, J. (2007) *Comparative Penology in Perspective*, *Crime and Justice* 36, no. 1 (2007): 49-91.

system degrades prisoners more than its peers. The author's comments on punishment and its ability to make the punished feel "diminished, lessened, and lowered can be extended to collateral consequences (which invoke the same feelings)."²⁵

Collateral Consequences in an era of Mass Incarceration

In considering the era of mass incarceration, one implication would be that more ex-convicts are subjected to collateral consequences than ever before. Over the last 40 years, there has been a 500% increase in the nation's prison and jail populations.²⁶ The Bureau of Justice Statistics estimates that 1 in 56 women and 1 in 9 men will serve time in a prison facility throughout their lifetime.²⁷ In general, people of color are more likely to be arrested and convicted harshly, thus, causing them to be overly represented in the criminal justice system. Scholars report that in 2018, Black people represented 27.4% of all law enforcement arrest despite only comprising of 13.4% of the United States population.²⁸ Additionally, in regards to these overall racial disparities, more than 60% of the people in prison today are people of color with Black men are six times as likely to be incarcerated as white men and Hispanic men are 2.7 times as likely. For black men in their thirties, about 1 in every 12 is in prison or jail on any given day.²⁹ Similarly in Pennsylvania in 2014, 48.7% of the state prison population was black and in Texas that figure was 35.9%.³⁰ These demographic characteristics confirm that people of color are disproportionately represented in the corrections system and, thus, disproportionately impacted by collateral consequence laws.

²⁵ Whitman, J. *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe*, Oxford University Press, 2005. Pp. introduction

²⁶ King & Mauer 3.

²⁷ Alper, M. (2018). *2018 Update on Prisoner Recidivism: A 9-year Follow-up Period (2005-2014)*. BJS, 24.

²⁸ FBI, Uniform Crime Reports, "Arrests by Race and Ethnicity, 2018, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-43>.

²⁹ King and Mauer 5.

³⁰ Ibid 7.

With this large of a vulnerable and disproportionately ethnic population, one can only assume the impacts of collateral consequence law. Besides, many sanctions can be implemented upon arrest without an individual serving prison time, broadening this scope to an even larger population. For instance, employment-related sanctions can be implemented without a conviction due to the publication of arrest records. Scholars estimate that as of 2015, the total number of persons with records in state criminal history record systems was about 110,235,200. Out of these approximately 110 million records, around 96% of them are automated, meaning they are quickly accessible through an online search.³¹

Furthermore, this era also saw increases in the implementation of collateral consequence laws. In the 1990s, Congress passed consequence laws that temporarily or permanently disqualified individuals convicted of felony drug offenses from receiving federal education grants and certain welfare benefits. Congress also passed laws barring individuals and their households from federal housing assistance if convicted of certain criminal offenses or suspected of criminal activity. With this legislation came increased discretion to local housing authorities to create their eligibility criteria regarding criminal records; considering the wide availability of criminal records and the stigmatization faced by ex-convict populations, it is not improbable that this legislation had negative impacts.³² In evaluating the increases in prison populations along with the spike in collateral consequence laws, there is an unprecedented number of individuals reentering society under these conditions.

Collateral Consequences and Reentry

³¹ *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report.* (2016). 132.

³² Pinard 638.

When looking at collateral consequence laws under the scope of criminological literature, much scholarship indicates that stringent laws result in higher prison recidivism rates. According to social stigmatization and criminal label theory, being labeled as a stigmatized person has considerable effects on the way people perceive themselves, as well as how they expect to be treated by others in their social environment.³³ Such responses to stigma can interfere with normal productivity and lead to maladaptive behaviors, poor mental health, and difficulty participating in the community.³⁴ Though not all individuals with negative labels experience adverse outcomes; scholars note that differences in how people think and feel about being stigmatized, and the degree in which they anticipate future discrimination predicts functioning.³⁵

A criminal conviction, along with the accompanying stigmatizing sanctions that, as cited in the introduction section of this research, add on to an anticipated future discrimination component, thus, have negative impacts on ex-convict populations. In a study of over 200 prison inmates before and after release, Crocker et al. found that perceptions of stigma can have serious implications for offenders' functioning once released from prison; additionally, being able to be an active member of one's community (i.e. access to housing, having a driver's license, having employment, supporting children, volunteering) is essential for the successful reentry of offenders after release from jail.³⁶ A study by Chiricos et al. supported this notion, finding that in a sample population of 100,000 prison inmates, it showed that those labeled are significantly more likely to recidivate in 2 years than those who are not due to barriers that prevent them from being active

³³ Crocker, J., Major, B., & Steele, C. (1998). Social stigma. In D. T. Gilbert, S. T. Fiske, & G. Lindzey (Eds.), *The handbook of social psychology* (p. 504–553). McGraw-Hill.

³⁴ Moore, K., Stuewig, J., & Tangney, J. (2013). Jail inmates perceived and anticipated stigma: Implications for post-release functioning. *Self and Identity*, 12(5), 527-547

³⁵ Crocker 504.

³⁶ Crocker 552.

community members. ³⁷ Thus, a criminal conviction jeopardizes the ability of ex-convicts to meet this active community member component, as collateral consequence laws restrict access to employment, housing, and welfare benefits.

METHODOLOGY

In this section, I will explain my methods of data collection – documentary analysis and regression analysis —and provide relevant information regarding the modeling and analysis of several key variables. The majority of my research comes from the regression analysis; however, I also utilize documentary analysis to inform the rationality behind the framework of the regression analysis.

While it is speculated that certain collateral consequences may aggravate recidivism rates and prohibit ex-offenders from successful societal re-entry, there exists a gap in the literature on how these consequences directly and empirically impact recidivism rates on an individual state level. This research will first address this gap by performing case studies on two distinctly different states, Texas and Pennsylvania. It will then provide an analysis of how each state approaches collateral consequence law relating to employment, housing opportunities, and welfare benefits; these categories were chosen because they apply to both states and prevent societal reintegration. This research aims to address two hypotheses. First, more stringent collateral consequence laws will make it harder for persons reentering society after a prison sentence to abstain from crime. Consequently, states with more stringent regulations will have higher rates of return to

³⁷ Chiricos, T., Barrick, K., Bales, W., & Bontrager, S. (2007). The labeling of convicted felons and its consequences for recidivism. *Criminology*, 45(3), 547-581.

incarceration. Second, collateral consequences categories will vary in their impact on recidivism rates.

Independent Variables: Collateral Consequence Laws

Historically, tracking collateral consequence laws has been difficult as they are scattered throughout state and federal statutory and regulatory codes; this makes identify all penalties that may be triggered by particular convictions difficult, as there is little coordination between different levels of the law. In recognizing the magnitude of collateral consequences, the federal Court Security Improvement Act of 2007 directed the National Institute of Justice to compile a database with collateral consequences affecting each jurisdiction. This created the National Inventory of Collateral Consequences of Conviction (NICCC), an online database that identifies and categorizes the statutes and regulations in all 50 states, the federal system, and the remaining U.S. territories.³⁸ Monitored by the Council of State Governments Justice Center (CSGJC), this database has been used in several other key studies in the field such as Hoskins (2018)³⁹ and GAO (2015).⁴⁰ According to CSGJC officials, the collateral consequences in the database is not updated on a real-time basis; the laws and regulations are updated intermittently based on a schedule developed by CSGJC project management. In some cases, changes may take a year or longer to be reflected in the database.⁴¹ This study focuses on laws and recidivism rates from 2013 to 2015, so the data should be up to date. Though, it is important to note that even though the data was

³⁸ About – National Inventory of the Collateral Consequences of Conviction. (n.d.). Retrieved December 11, 2019, from <https://niccc.csgjusticecenter.org/about/>

³⁹ Hoskins, Z. Criminalization and the Collateral Consequences of Conviction. *Criminal Law, Philosophy* 12, 625–639 (2018).

⁴⁰ U.S. Government Accountability Office. Nonviolent Drug Convictions: Stakeholders’ Views on Potential Actions to Address Collateral Consequences. *Report to Congressional Committees*.

⁴¹ U.S. Government Accountability Office 30.

obtained on December 11, 2019, it may include statutes that have been modified or removed by a state jurisdiction after 2015.

The NICCC database was utilized to collect data on collateral consequences falling under the employment, housing, and welfare benefits (public assistance) categories for Texas and Pennsylvania on the federal and state levels. While the NICCC database does provide a categorization methodology for collateral consequences (See Appendix I), I have reframed the scope for the needs of this analysis. The following table summarizes the categories used in this analysis:

Category	Description
Employment	This category includes bans on public employment, volunteering, publicly regulated private employment, employment by licensed business entities, and employment as a manager or officer of a business; barriers to employment such as public criminal records, mandatory background checks, mandatory disclosure requirements. Laws limiting business licensure, motor vehicle licenses, and occupational/professional licenses, are also included.
Welfare Benefits	This category includes benefits in the form of welfare, health (e.g., Medicaid and Medicare), retirement, workers compensation, veterans, employee benefits, governmental loans (professional/educational), etc.
Housing	This includes occupancy in any form of housing, vouchers, housing subsidies, and subsidized housing. Restrictions on residency in licensed facilities are coded in this category. Mandatory disclosure requirements to landlords and housing lenders are also included.

Source: U.S. Government Accountability Office

In addition to providing information on the statutes, the database also provided information on their discretion and duration; discretion indicates how the statutes are implemented (either mandatory/automatic or discretionary) and duration indicates how long each law may impact the life of ex-offenders. Compiling this information resulted in the creation of a unique dataset for

both Texas and Pennsylvania (see Table 2). This preliminary work allowed for an analysis of the effects of different categories of laws as well as their combined impact.

Documentary Analysis: Coding the Collateral Consequence Laws

I used the NICCC database as the main source for developing a coding system to enable analysis on the category level. This was done for the case studies of Texas and Pennsylvania. This quantification of the qualitative data was also supplemented through the consultation of scholarly literature and policy briefs to provide more context. I identified seventeen dimensions across the three categories of laws to transform them into empirical data. Each dimension represents a subset of laws that falls under the scope of the main category (employment, welfare benefits, and housing). All laws in the data set were coded under these dimensions. Laws with higher numbers indicate harsher laws, while lower numbers indicate more leniency.⁴² To avoid confirmation bias, the severity of the laws was evaluated by the discretion and duration dimensions provided by the NICCC data set as well as previous research regarding the impact of certain laws on societal reentry. The coding of these laws can be found in Tables 2-4. The dimensions also contributed to the creation of cumulative category scores for more comprehensive data displays.

Employment:

The employment-related collateral consequence laws were coded with seven dimensions. The first dimension is whether or not the state provides a means for ex-offenders to demonstrate rehabilitation; such a measure allows for persons to distance themselves from their previous discretions. The second dimension is whether the state permits employers to consider arrests that do not lead to a conviction against individuals when reviewing applications for employment. The

⁴² This coding methodology was adopted and modified from Sohoni (2013) which is cited below:
Sohoni, T. (2013). *The Effect of Collateral Consequence Laws on State Rates of Returns to Prison*. 45-68.

third dimension looks at if the state has standards in place to prevent discrimination based on conviction records. The fourth dimension considers where criminal records are displayed in the respective state. The fifth dimension examines who has access to conviction records. The seventh dimension is whether or not the state has limitations on professional/occupational licenses. The eighth dimension looks into the discretionary aspect of license revocation. Finally, the ninth dimension looks at exceptions made to license revocation. Table 2 shows this coding schema in detail:

Table 2: Coding Dimensions for Collateral Consequence Laws	
Employment Dimensions	Numerical Codes
<i>State Recognizes Rehabilitation of Offenders</i>	
State offers a formal means to demonstrate rehabilitation	0
There is a limited means of demonstration	0.5
There is no means to demonstrate rehabilitation	1
<i>Employers Consider Arrests Leading to a Conviction</i>	
Cannot consider arrests not leading to conviction in employment decisions	0
Can consider arrests not leading to conviction in employment decisions	1
<i>State has Standards to Prevent Conviction Record Based Discrimination</i>	
State has policies in place to prevent discrimination based on conviction records	0
State does not have policies in place to prevent discrimination based on conviction records	1
<i>Criminal Records are Public/ on the Internet</i>	
Not available on the Internet	0
Only convictions, probation, or parole on the Internet	0.5
All records accessible on the Internet	1
<i>Considerations for who has Access to Records</i>	
Only authorized government agencies or employers with vulnerable populations have access	0
All employers have access to the records	1
The public has access to all records	2
<i>Limitations on Professional, Occupational, and Business Licensure</i>	
State prohibits restrictions on professional and occupational licensing	0
State only restricts licensing for certain offenses	0.5
State has blanket restrictions on professional and occupational licensing	1
<i>Automatic Driver's License Revocation</i>	

Revokes only for offenses related to operating a vehicle under the influence	0
Is revoked for additional crimes	1
<i>Offers a Restrictive License for Transportation to Employment Opportunities</i>	
Offers a restricted license	0
Does not offer a restricted license	1

Welfare Benefits:

The welfare benefits collateral consequence laws are coded under three dimensions. First, whether or not the state has restrictions on TANF and/or SNAP. The next dimension analyzes federal aid and whether or not there are restrictions; aid allows for individuals to pursue educational and housing opportunities. Lastly, access to public health benefits is examined. Table 3 contains the detailed coding schemas for this statute category.

Table 3: Coding Dimensions for Collateral Consequence Laws	
Welfare Benefit Dimensions	Numerical Codes
<i>TANF and SNAP Restrictions</i>	
State has no lifetime ban on TANF and/or SNAP for certain offenders	0
State has restrictions of TANF and/or SNAP for certain offenders	0.5
State has a lifetime ban on TANF and/or SNAP for certain offenders	1
<i>Federal Loans or Grants</i>	
State has no restrictions on offenders receiving federal aid	0
States has restrictions depending on the criminal offense	1
<i>Medicare/Medicaid Restrictions</i>	
State has no policies in place to restrict access to health benefits	0
State has policies in place to restrict access to health benefits	1

Housing:

The housing collateral consequence laws were coded with five dimensions. The first dimension is whether or not Housing Authority officials consider arrests and convictions in the screening process. The second dimension looks at whether the Housing Authority individual determines the status of each case rather than instituting blanket bans for certain ex-offender groups. The third dimension covers housing discrimination and whether or not state mandates are

surrounding conviction-based housing discrimination; this includes housing properties not associated with government welfare benefits. The fourth dimension covers the relevance of mandatory disclosures of conviction status to any housing authorities. This applies to institutions such as banks, private lenders, landlords, and real estate agencies. Lastly, this coding schema looks at the length of conviction bans on public housing. Since this analysis looks at the application of state and federal statutes, there may be variations depending on the offense. The coding for housing-related collateral consequences can be found in Table 4.

Table 4: Coding Dimensions for Collateral Consequence Laws	
Housing Dimensions	Numerical Codes
<i>Housing Authority Considers Arrests/Convictions in the Screening Process</i>	
Does not consider arrests/convictions in the screening process	0
Does not consider arrests but considers convictions in the screening process	0.5
Does consider arrests/convictions in the screening process	1
<i>Housing Authority Has Individual Determinations for Each Case</i>	
Make individual determinations for each case	0
Makes individual determinations for most cases or has an appeal process	0.5
Has mandatory bans on offenders	1
<i>State has Standards to Prevent Conviction Record based Housing Discrimination</i>	
State has policies in place to prevent discrimination based on conviction records	0
State does not have policies in place to prevent discrimination based on conviction records	1
<i>Mandatory Disclosure to Landlords/Housing Lenders</i>	
Does not require the mandatory disclosure of non-violent criminal records	0
Does require the mandatory disclosure of non-violent criminal records	1
<i>Length of Longest Conviction Ban on Public Housing</i>	
No ban on housing	0
Limited ban on housing 1-6 years	1
Extended or permanent ban	2

Dependent Variable: State Recidivism Data

The dependent variable data, recidivism rates for adult felony offenders from 2013 to 2015 is sourced from the Texas and Pennsylvania Department of Corrections; this is the most recent data set available for the populations in question. Both data sets are longitudinal studies where adults released from prison facilities were monitored to determine the percentage rearrested for an offense within three years of release or within three years of the start of the study. For any subject that had more than one subsequent arrest during the follow-up period, only the first arrest was counted in each calculation of the rearrests rate. Both data sets are limited to prisoners who max out sentences rather than those on parole. This is because each state has different guidelines for reporting numbers for the parole subset. Relying on max out sentences for the dependent variable eliminates the possibility of skewed data due to methodological differences. The dependent variable for Texas is the percent of the state's ex-offender population that was released in 2013 that are categorized as reoffenders in 2015. The dependent variable for Pennsylvania is the percent of the state's ex-offender population that was released in 2013 that is categorized as offenders in 2015. The data for these variables can be found in Table 5.

State	2013	2014	2015
Texas	46.4%	46.3%	45.4%
Pennsylvania	50.6%	50.4%	50.7%

Source: Texas Department of Corrections; Pennsylvania Department of Corrections

Regression Analysis

The main source of data analysis in this study was the empirical evaluation of the collateral consequences in both Texas and Pennsylvania through the development of a regression model. A

regression analysis was chosen to conclude the magnitude of the collateral consequences and their relation to recidivism rates in both states. On a broader scale, this reveals a better understanding of how these laws impact societal reentry. The units of analysis are the states of Texas and Pennsylvania. The independent variables are the collateral consequences of a conviction that impact offender reentry; these laws were coded based on the NICCC database. A model was created for each category (employment, welfare benefits, and housing). The dependent variables have been drawn from data sets from each state on recidivism rates for adult felony offenders over a three-year metanalysis from 2013 to 2015. Each data set is derived from the respective state's department of corrections depicted in Table 5.

Prison recidivism is not solely influenced by collateral consequence laws. To account for additional factors, each model must include controls. Controls are sourced from the Bureau of Justice Statistics as well as other governmental agencies (see Appendix II and III). State imprisonment rates may influence recidivism as a criminal record is often associated with reoffending.⁴³ So, it is plausible to assume that states with higher prison rates may have higher recidivism rates. Because of this association I included controls for state prison rates in each of my models. Additionally, general unemployment could be a factor in imprisonment as being a part of the workforce may indicate less of a need to turn to crime for survival.⁴⁴ This assertion led to controls for state unemployment rates being incorporated into each model.

⁴³ FBI, Uniform Crime Reports, "Arrests by Race and Ethnicity, 2018, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-43>.

⁴⁴ FBI 10.

DATA AND DISCUSSION OF RESULTS

From my case studies of Texas and Pennsylvania, I identified over 3,000 collateral consequences in both states. In each state, the most prominent category of the laws proved to be the employment-related; this finding was unsurprising, as previous research indicates that employment is the main barrier to societal reentry. When completing my case studies, I found that there are two relevant factors to consider when classifying collateral consequence laws, discretion and duration. Discretion indicates whether or not the laws are implemented automatically or at the will of the state. Duration indicates if the law is temporarily applied or permanently applied. These factors contributed to the documentary analysis of both states, as they were the rationale behind the coding methodology (see Table 6 and 7 for this analysis).

Texas

Documentary Analysis: Independent Variables for Texas

When utilizing the NICC, database it was found that there were 1,887 collateral consequence laws on both the state and federal levels. The most prominent types of laws fell under the employment and welfare benefits categories. The low number of housing-related statutes was surprising as prior research indicated that this category would be more significant. Discretion and duration proved to be influential factors in this data set, as the majority of laws fell under mandatory and permanent when considering implementation. It was found that Texas' laws, a state with relatively harsher laws, were more stringent than Pennsylvania's. The following data table summarizes the number of consequences that fall under the key characteristics of the data set:

Table 6: Preliminary Classifications of Collateral Consequence Laws

Type			Discretion		Duration	
<i>Employment</i>	<i>Housing</i>	<i>Welfare Benefits</i>	<i>Mandatory</i>	<i>Discretionary</i>	<i>Temporary</i>	<i>Permanent</i>
1341	35	547	1830	57	333	1554

Source: NICCC

Employment:

Overall, the coding analysis revealed two key findings in this category: the dimensions relating to criminal records, “Criminal Records are Public/ on the Internet” and “Considerations for who has Access to Records” proved to be too similar in scope. The internet dimension was dropped from the data set for the employment model. The similarities between it and the access dimension made the model repetitive and overestimated the impact of this type of employment-related laws on the data set. Another dimension was added to account for employment collateral consequences that did not fall under other dimensions; incorporating this extraneous category allowed for more model accuracy, as there were over 1,300 statutes to account for.⁴⁵ This also ensures that the sample is representative of the reframed categorization of employment consequences (see Table 1). The employment category proved to be the most stringent for Texas, which is unsurprising due to the large quantity of statutes.

Welfare Benefits:

This category yielded laws related to restrictions and stipulations on public assistance programs such as SNAP, TANF, and Medicaid. In Texas, policymakers have recently altered the SNAP ban, extending eligibility to persons with felony drug convictions who have completed their

⁴⁵ This stipulation was also applied to the welfare benefits and housing categories as there were extraneous laws that were not accounted for in the dimensions. Rather than altering the changing dimensions in the methodology, I have included them in the results, as they validate the ongoing and amenable nature of modeling.

sentences. A mandatory TANF ban remains for all felony drug convictions.⁴⁶ However, this alteration to the policy was implemented at the end of 2015, so it is outside of the scope analysis. The exclusion of this benefits the data set as it provides a clear measure for how complete ban policies impact recidivism rates; this also may reveal policy implications for additional states that still have a complete ban framework such as Mississippi and South Carolina. Having a model based upon the ban also allows for more contrast to be made between Texas and Pennsylvania, as the latter is an advocate for no bans on SNAP and a modified TANF ban.

Housing:

Housing-related collateral consequences revealed that the law does not show any leniency towards ex-offenders. Housing through HUD, the Housing of Urban Development, is unavailable to those charged with the sale or manufacturing of methamphetamines. HUD does collaborate with additional housing agencies to provide housing to qualified offenders based upon an area's annual median income and offering subsidies. In select cases, housing can be free, but this is a rarity. The state does not have any regulations on the private housing market. Landlords can legally deny ex-offenders applications for tenancy on a discretionary basis as long as there is no violation of the U.S. Fair Discrimination Act. This act only applies to protected classifications such as race, gender, sexuality, sex, and religion.⁴⁷

Regression Analysis:

In my study, I used a linear least squares regression to examine the relationship between collateral consequence laws and state recidivism rates. In this study, the units of analysis are the states. The independent variables are the collateral consequences of a

⁴⁶ SB 200, Texas Legislature, June 2015.

⁴⁷ Texas Department of Housing and Community Affairs (2020).

conviction that impact offender reentry; these laws were coded based on the NICCC database. The dependent variables, state recidivism data, have been drawn from each state's department of corrections. Due to the number of independent variables, I choose to perform my analysis for each category of laws independently.

In my analyses, I expect to see a positive relationship between the harshness of laws and higher rates of returns to prison. All collateral consequence variables have been coded in such a way that higher numbers are associated with "harsher" laws; therefore, a positive relationship indicates that laws are related to higher rates of returns to prison and a negative relationship indicates that laws are related to lower rates of returns to prison.

To gauge the validity of the model, a baseline was constructed using the controls as the independent variable. This model helped to explain the relationship between the controls and the dependent variables; it also allowed a preliminary examination of the Texas data set. The first baseline model using the Texas data set (see Table 5) can be found in Appendix IV. The r-square value is .232, which indicates that the model is a relatively good fit. The model revealed imprisonment rates to be the only statistically significant variable. This is surprising as it conflicts with the scholarly notion that both imprisonment and unemployment are contributors to recidivism. The model indicates that a state with higher imprisonment rates is associated with lower recidivism rates; while high imprisonment rates do indicate some aspect of recidivism, this association implies that the facilities may be yielding a high quantity of new offenders that oversaturates the sample size. This relationship is fairly strong with a standardized coefficient value of $-.105$. Although not statistically significant, the model shows a relationship between high rates of unemployment and recidivism rates.

Employment:

Dimension (Variables)	State Recidivism Rates		
	<i>Coefficients (standardized)</i>	<i>Standard Error</i>	<i>Significance</i>
Imprisonment Rate	-.143	.340	.034
Unemployment Rate	1.70	1.13	.040
Employment Cumulative Score	.104	.480	.021

R-square value: .372

The collateral consequence laws relating to employment included nine different types of policies that fell under the dimensions outlined in the documentary analysis section. The laws scored with zeros were expected to be negatively related to recidivism rates while laws with higher scores were expected to be positively related. The dimensions were used to create a cumulative score for the category. This model yielded mixed results. The Texas laws related to employment proved to be significant in affecting recidivism rates. Though, the effects were relatively weak with a standardized coefficient of .104. This conflicts with previous predictions that employment would have a strong association with Texas recidivism rates due to the large number of statutes. Though, because the relationship is significant, it can be concluded that there is a positive relationship between more stringent laws and rates of return to prison.

Welfare Benefits:**Table 8: Approximate Effects of Welfare Benefit Collateral Consequence Laws on Recidivism Rates**

Dimension (Variables)	State Recidivism Rates		
	<i>Coefficients (standardized)</i>	<i>Standard Error</i>	<i>Significance</i>
Imprisonment Rate	-.105	.230	.022
Unemployment Rate	.241	1.53	.094
Welfare Benefits Cumulative Score	.072	.730	.046

R-square value: .184

The collateral consequence laws relating to welfare benefits included four different types of policies that fell under the dimensions outlined in the documentary analysis section. The laws scored with zeros were expected to be negatively related to recidivism rates while laws with higher scores were expected to be positively related. The dimensions were used to create a cumulative score for the category. The model yielded positive results. The Texas laws related to welfare proved to be significant in influencing recidivism rates. Though, the effects were relatively weak with a standardized coefficient of .072. The weak relationship may be explained by the limited effects found with laws relating to TANF stipulations on ex-offenders. While Texas is stringent on most welfare benefits, it has lifted the SNAP ban. Regardless, because the finding is significant, it can be concluded that there is a positive relationship between more stringent laws and rates of return to prison.

Housing:**Table 9: Approximate Effects of Housing Collateral Consequence Laws on Recidivism Rates**

Dimension (Variables)	State Recidivism Rates		
	<i>Coefficients (standardized)</i>	<i>Standard Error</i>	<i>Significance</i>
Imprisonment Rate	.132	.937	.076
Unemployment Rate	.321	1.87	.035
Housing Cumulative Score	-.238	.843	.087

R-square value: .423

The collateral consequence laws relating to housing included four different types of policies that fell under the dimensions outlined in the documentary analysis section. The laws scored with zeros were expected to be negatively related to recidivism rates while laws with higher scores were expected to be positively related. The dimensions were used to create a cumulative score for the category. The model produced unexpected results. The Texas laws related to housing proved to be insignificant in influencing recidivism rates. Contrary to initial predictions, more severe housing regulations resulted in lower recidivism rates. This also implies that Texas housing policy, a state that does consider convictions in housing decisions and lacks target discrimination laws, leads to less difficulties finding housing, and lower rates of recidivism. This is the opposite of what I expected. This variability could be due to the data set being representative of a certain portion of the state, as the NICCC database does not account for county variation. Further research needs to be done to determine the accuracy of this conclusion.

Pennsylvania**Documentary Analysis: Independent Variables for Pennsylvania**

When utilizing the NICC, database it was found that there were 1,278 collateral consequence laws on both the state and federal levels. It was found that Texas' laws, a state with relatively harsher laws, were more stringent than Pennsylvania's. The following data table summarizes the number of consequences that fall under the key characteristics of the data set.

Table 10: Preliminary Classifications of Collateral Consequence Laws

Type			Discretion		Duration	
<i>Employment</i>	<i>Housing</i>	<i>Welfare Benefits</i>	<i>Mandatory</i>	<i>Discretionary</i>	<i>Temporary</i>	<i>Permanent</i>
1171	29	78	1067	104	189	1089

Source: NICCC

Employment:

Overall, the coding analysis revealed that employment was the most influential category. Similar to Texas, there has been limited reform in Pennsylvania in this category; most reform efforts have focused on major consequences such as welfare benefit and housing bans. Though, there have been statutes implemented to prevent hiring discrimination beyond the application of the federal level statute Title VII of the Civil Rights Act of 1964, which prohibits discrimination in the hiring and screening processes of employment.⁴⁸ Under state law, an employer may consider an applicant's felony or misdemeanor convictions in the hiring process only if they relate to the duties of the job. If an employer decides not to hire someone based on his or her criminal record, the employer must inform the applicant in writing with a clear explanation of how the record prohibits success on the job. Another dimension was added to account for employment collateral consequences that did not fall under other dimensions; incorporating this extraneous category

⁴⁸ Title VII of the Civil Rights Act of 1964. (n.d.). Retrieved April 10, 2020, from <https://www.eeoc.gov/laws/statutes/titlevii.cfm>

allowed for more model accuracy, as there were over 1,100 statutes to account for.⁴⁹ This also ensures that the sample is representative of the reframed categorization of employment consequences (see Table 1).

Welfare Benefits:

This category yielded laws related to restrictions and stipulations on public assistance programs such as SNAP, TANF, and Medicaid. Under the Personal Responsibility and Work Opportunity Reconciliation Act, Pennsylvania has opted out of the SNAP ban as legislators recognized that it is not an effective crime deterrent and impedes societal reentry. In 2018, the state adopted a new TANF policy, making recipients convicted of drug trafficking ineligible unless that fulfill all court obligations, are active participants in a substance abuse treatment program, and consent to random drug testing for 10 years following their conviction; this alteration was implemented to address state concerns of substance abuse orders, which were ignored by the ban policy.⁵⁰ Because of these active steps towards reform, there is are a limited number of statutes in this category in comparison to Texas. This could be due to divergences in political ideologies and theories of justice, as Texas is historical more conservative and tough on crime.

Housing:

Similar to Texas, Pennsylvania affords HUD privileges to most ex-offenders. Methamphetamine and sex offender convictions lead to restrictions in access. These programs provide affordable rental apartment options and subsidies. Private housing is subjected to

⁴⁹ This stipulation was also applied to the welfare benefits and housing categories as there were extraneous laws that were not accounted for in the dimensions. Rather than altering the dimensions in the methodology, I have included the changes in the data and discussion section, as they validate the ongoing and amenable nature of modeling.

⁵⁰ Act 125, Pennsylvania General Assembly, (2018).

additional oversight, as property managers must follow anti-discrimination laws when renting properties. Housing discrimination is illegal when a landlord uses their own biases; if a landlord rents to one individual with a criminal background and not another it is considered arbitrary and inequitable in the eyes of the law. Furthermore, lease denials are only legal when based on an applicant's leasing or credit history. Legal action can be pursued if violations of these stipulations take place.⁵¹

Regression Analysis:

To test the validity of the model, a baseline was constructed using the controls as the independent variable. This model helped to explain the relationship between the controls and the dependent variables; it also allowed a preliminary examination of the Texas data set. The first baseline model using the Pennsylvania data set (see Table 5) can be found in Appendix IV. The r-square value is .232, which indicates that the model is a relatively good fit. The model revealed imprisonment rates to be the only statistically significant variable. This is surprising as it conflicts with the scholarly notion that both imprisonment and unemployment are contributors to rates of return to prison. The model indicates a negative relationship between imprisonment and recidivism; while imprisonment rates do imply some effect on recidivism, this association implies that the facilities are yielding a high quantity of new offenders. This relationship is fairly strong with a standardized coefficient value of -.326. Although not statistically significant, the model shows a relationship between rates of unemployment and recidivism.

⁵¹*Pennsylvania, U.S. Department of Housing and Urban Development (HUD)*. (n.d.). Retrieved April 10, 2020, from <https://www.hud.gov/states/pennsylvania/renting>

Employment:**Table 11: Approximate Effects of Housing Collateral Consequence Laws on Recidivism Rates**

Dimension (Variables)	State Recidivism Rates		
	<i>Coefficients (standardized)</i>	<i>Standard Error</i>	<i>Significance</i>
Imprisonment Rate	-.142	.637	.039
Unemployment Rate	.532	1.29	.083
Employment Cumulative Score	.033	.480	.040

R-square value: .372

The collateral consequence laws relating to employment included nine different types of policies that fell under the dimensions outlined in the documentary analysis section. The laws scored with zeros were expected to be negatively related to recidivism rates while laws with higher scores were expected to be positively related. The dimensions were used to create a cumulative score for the category. The model yielded mixed results. The Pennsylvania laws related to employment proved to be significant in affecting recidivism rates. Though, the effects were relatively weak with a standardized coefficient of .033. This conflicts with previous predictions that employment would have a strong association with Pennsylvania recidivism rates due to the large number of statutes. In contrast to Texas, the coefficient value is a lot lower, as the state has taken many action steps to reduce discriminatory practices as noted with the extension of the Civil Rights Act.

Welfare Benefits:

Dimension (Variables)	State Recidivism Rates		
	<i>Coefficients (standardized)</i>	<i>Standard Error</i>	<i>Significance</i>
Imprisonment Rate	.034	.784	.056
Unemployment Rate	.746	1.52	.048
Welfare Benefits Cumulative Score	.013	.620	.097

R-square value: .225

The collateral consequence laws relating to welfare benefits included four different types of policies that fell under the dimensions outlined in the documentary analysis section. The laws scored with zeros were expected to be negatively related to recidivism rates while laws with higher scores were expected to be positively related. The dimensions were used to create a cumulative score for the category. The model yielded mixed results. The laws related to welfare proved to be insignificant in influencing recidivism rates. This is a noteworthy observation as it conflicts with previous predictions and is against presumed logic; with the inclusion of the TANF ban, the category was expected to be significant. The effects were also relatively weak with a standardized coefficient of .013. Though, in comparison to Texas, Pennsylvania has made a more active effort to reduce welfare-related barriers. Regardless, because the finding is insignificant, it cannot be concluded that there is a relationship between more stringent welfare laws and rates of return to prison.

Housing:

Dimension (Variables)	State Recidivism Rates		
	<i>Coefficients (standardized)</i>	<i>Standard Error</i>	<i>Significance</i>
Imprisonment Rate	.174	0.04	.053
Unemployment Rate	.762	1.38	.082
Housing Cumulative Score	-.278	.935	.026

R-square value: .523

The collateral consequence laws relating to housing included four different types of policies that fell under the dimensions outlined in the documentary analysis section. The laws scored with zeros were expected to be negatively related to recidivism rates while laws with higher scores were expected to be positively related. The dimensions were used to create a cumulative score for the category. The model produced unexpected results. The Pennsylvania laws related to housing proved to be significant in influencing recidivism rates. This result was in line with the initial predictions that less severe housing regulations resulted in lower recidivism rates. It is important to note that the relationship is a weak with a standardized coefficient of $-.278$. The model also has a relatively low p-value, indicating more reliability in its result; the r-square value is the highest out of any model, which further supports the conclusion that the analysis is a good fit for the data.

POLICY RECOMMENDATIONS

In this study, the impact of collateral consequence laws on recidivism rates suggests that reform is necessary. I have identified three categories of these types of sanctions in need of intervention in both Texas and Pennsylvania to see long-lasting positive results on recidivism rates. This three-pronged approach to reforming employment-related, housing-related, and welfare-related collateral consequences is crucial to the development of successful reentry policy. The results of the regression analysis indicated that the employment and welfare categories are the most significant in affecting recidivism rates. While the impacts of one area on the quality of life of ex-offenders may be larger, it is important to ensure that all three categories of the laws are reformed to generate positive outcomes.

Due to other factors that may influence recidivism rates and, my recommendations are flexible and will address the general needs of the affected populations. While both the Texas Department of Corrections and the Pennsylvania Department of Corrections have differing status quo policies, both states will benefit from generalizable improvements on the state level; based on my findings there are universal trends that need reform in the employment and welfare categories. My policy recommendations are based on the findings of my documentary analysis of federal and state legislation surround collateral consequence sanctions in conjunction with a quantitative analysis associating them with recidivism rates. Cumulatively, I evaluated over 3,000 policies from all three categories, ranging from mandatory/discretionary sanctions to temporary/permanent. I have framed my recommendations to reform the types of policies that seem to have the most impact on ex-offender populations. For criminal justice reform policy to be effective, it must be feasible

to implement (whether on the state or federal level), address the core issue of recidivism rates, be tailored to the affected population, and rectify a balance between public safety and humanity.⁵²

Before I propose my policy recommendations, I do want to stress that all of the proposals require the buy-in of state legislators, which potentially limits successful implementation. I have also included an idealistic plan to widen the scope of criminal justice reform on the federal level, which is just an additional recommendation for future action. My case studies revealed overwhelming sanctions for ex-offenders. In Texas and Pennsylvania, employment was the most significant factor that increased recidivism rates; welfare benefits were also a priority in both states, while housing proved to be negatively associated with increased recidivism in Pennsylvania and indeterminate in Texas. Ex-offenders are also often stigmatized and believed to be dangerous just for possessing a criminal record. Eliminating stringent policies enacted under the guise of public safety may not be well received by legislators who subscribe to traditional ideals and have not made any efforts for reform. Additionally, collateral consequence laws have been developed fragmentarily, not systematically. With limited opportunities for judicial review and evaluations of their implementation, many legislators may not even be aware of their existence or impact. These laws also tend to mostly impact minority populations which may not have the capital or resources to lobby for change. Thus, calling attention to policymakers is a potential barrier to implementation.

Even if states do enact legislation mandated on a state level, discrimination against former offenders could still be a reality. For instance, in the case of employment-related consequences,

⁵² Nwanevu, O. (n.d.). *The Improbable Success of a Criminal-Justice-Reform Bill Under Trump*. The New Yorker. Retrieved February 7, 2020, from <https://www.newyorker.com/news/news-desk/the-improbable-success-of-a-criminal-justice-reform-bill-under-trump>

potential employers may still disregard applications indicative of a criminal record. Landlords and property management companies will always have some form of discretion. Combating this considering that discrimination is an inherent societal construct independent of legislation, this implementation barrier may be challenging. To combat these barriers, the bulk of my policy recommendations will focus on the elimination of discretionary tactics. Similar to my case studies, these recommendations are based on the state and federal level qualitative and quantitative data.

1. State Reframing of Collateral Consequence Policymaking

Currently, it seems that collateral consequences are sometimes imposed casually, without full consideration of how they fit into a system of punishment, reentry, employment, and protection of the public.⁵³ There needs to be statewide shifts in the conception of these laws, as they should be tailored to a specific purpose and not aim to “double punish” ex-offenders. The connection between the consequence and the reduction of the risk has often been based not on evidence, but, rather, on intuition or assumptions based on perceived logic.⁵⁴ Collateral consequences should be based upon ensuring public safety: both by protecting the public from harmful individuals and by leaving room for people with convictions to lead law-abiding lives.⁵⁵ Policymakers should also correlate consequences to empirically validated factors such as time since criminal involvement, and evidence of law-abiding citizenship, rather than arbitrarily infliction. Utilizing this approach and reframing policy could prove to be even more beneficial to the public safety effect. Several studies show that the risk of reoffending diminishes with time since criminal involvement.⁵⁶ A recent study also suggests that many of the current disqualifications imposed by statutes do not

⁵³ Chin, G. J. (n.d.). Collateral Consequences and Criminal Justice: Future Policy and Constitutional Directions. *MARQUETTE LAW REVIEW*, 229.

⁵⁴ Chin 230.

⁵⁵ Chin 241.

⁵⁶ Chin 2242.

match the decisions that would be reached if empirical data about criminal records and reoffending was utilized. Ex-offenders can get fairer treatment and public safety can be better protected, if decision-makers consider empirically reliable, rather than arbitrary factors based on conviction of particular crimes. A clear benefit to this reframing is that minimal funds are required for execution besides the wages for legislators drafting and implementing statute changes. In applying this new framing, The Pennsylvania and Texas Department of Corrections in collaboration with state legislators should look to make the following adoptions:

a) Employment:

I urge legislators to create a process for sealing federal and state conviction records for non-violent offenses. This process should be initiated within five years of the criminal conviction and be contingent on the ex-offender proving a pattern of law-abiding behavior. This federally enacted policy would allow for expungement based upon empirically valid factors and eliminate the discretion needed with Presidential pardons.

b) Welfare Benefits:

I urge state legislators to pass legislation to eliminate all blanket restrictions on Temporary Assistance for Needy Families (TANF) in Texas, as states have discretion in opting into the ban. Under TANF, the federal government provides grants to states to provide financial assistance to qualifying low-income families;⁵⁷ under SNAP, the federal government appropriates funding to states for qualifying low-income households to purchase food.⁵⁸ TANF benefits are permanently

⁵⁷ 42 U.S.C. §§ 603, 604.

⁵⁸ 7 U.S.C. §§ 2012, 2013.

restricted if an individual has a conviction that involves the possession, use, or distribution of drugs unless a state utilizes discretion to limit or revoke the restriction. While criminal drug convictions are not condoned, these sanctions do not impact public safety and, instead, place harsh burdens on ex-offenders. Removing access to these public benefits can significantly increase the chances of recidivism, as empirically shown in the regression analysis. Additional societal stigma research and employment barriers make this population in need of financial assistance.

c) **Housing:**

I urge state legislators to pass legislation to eliminate restrictions on public housing except for offenders registered on the sex offender registry. For all other offenses, public housing officials should be evaluating candidates based upon empirically valid factors outlined in the reframing mandate. Upon release, many ex-offenders are returning to low-income communities where affordable housing may be hard to find. Without a stable place of residence, it is difficult to ensure successful societal reentry. This state enacted policy would eliminate discretion used by housing authorities and allow for equal opportunities to eligibility. Texas should also adopt targeted anti-discrimination policy applicable to housing, as seen in Pennsylvania.

2. Creation of a Best Practices Guide for State Distribution

As a potential long-term solution, I recommend the creation of a national standard. Rather than allowing for states, such as Texas and Pennsylvania, to discretionarily create sanctions, there needs to be a national standard; considering current political relations and lack of emphasis on criminal justice reform, I suggest the implementation of this idealistic program take place when there is an excess in the United States Department of Justice's budget. States should be mandated to comply

with a best practice guide which will outline and clarify how every region should be reforming their collateral consequence policies. The United States Department of Justice should distribute this guide and enforce compliance. States should be given a five-year grace period to allow for proper implementation and will be required to submit proof of compliance at the five-year mark. Each state should look to make the following adjustments to current collateral consequence sanctions:

- a) All current collateral consequence laws should undergo a comprehensive analysis ensuring that they are compliant with the national standard, i.e. that they have a connection to public safety and ex-offender best interests. Consequences triggered by-laws with no connection to these aims shall be repealed.
- b) Laws should be made available in a public format, accessible to state occupants with special attention paid to public defenders and attorneys.
- c) Clear standards for professional licensing and licensure boards should be set for those seeking to obtain such certification with a criminal conviction. Rather than utilizing discretion, these standards must provide sound rationale.
- d) All states must implement programming to provide job opportunities to ex-offenders and provide them with a list of employers who have undergone a state-mandated bias training; such training will provide these employers with more understanding of the process of societal reentry and lead them to not automatically disqualify candidates due to a criminal record. This program will be covered by state correction's budgets.
- e) All states must ensure that criminal records are not publicly accessible through an automated, online database.

- f) In efforts to ensure that collateral consequences of convictions are remaining compliant with its redefined aims of public safety and ex-offender interests, I urge for state governments to mandate a periodical review of all laws. This review shall take place every three years following the five-year grace period granted for implementation.

The Need for Action

I urge policymakers to engage with these proposals for programs and legislative action. In their current form, collateral consequences have proliferated throughout state and federal law, leading to a large number of restrictions on convicted individuals. For many of these people, the collateral consequences create a bigger burden than the conviction. Throughout our nation's history, the legal system ignored these laws and legislators generated them on an ad hoc basis.⁵⁹ Additionally, Scholars report that in 2018, Black people represented 27.4% of all law enforcement arrest despite only comprising of 13.4% of the United States population.⁶⁰ When considering that a large portion of those incarcerated are low-income people of color, these sanctions provide an even greater risk of further marginalizing these populations. Overall, investing the time and money into reforming collateral consequences of conviction means we spend less money incarcerating people in the future. As I suggested in my literature review and throughout my case studies, lower recidivism rates and positive reentry outcomes are related to receiving welfare benefits and employment opportunities. With the implementation of these changes, society will benefit from improved public safety, unnecessary recidivism, and more cases of successful reentry.

⁵⁹ Chin 260.

⁶⁰ FBI, Uniform Crime Reports, "Arrests by Race and Ethnicity, 2018, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-43>.

CONCLUSION

Despite completing their sentence, ex-offenders are being subjected to sanctions while attempting societal reintegration. These sanctions include employment barriers such as background checks which indiscriminately disqualify all applicants with criminal records. Additionally, barriers to accessing both public and private housing as well as other welfare benefits such as SNAP and TANF exist, even though these elements may be vital to avoid future incarceration; having access to employment, food, and housing are also vital. Without these basic needs, it is hard to imagine having a long and fulfilling life, let alone one free of criminal activity.

In my research, I focused on two different states with differing sanctions affecting ex-criminal populations – Pennsylvania and Texas. In Pennsylvania, there are over 1,000 state collateral consequence statutes that affect reentry, while in Texas there are over 1,500. Additional federal level statutes apply to both states. Using both Texas and Pennsylvania as case studies, my research examined the severity of these statutes and their implications on societal reentry and recidivism rates for ex-offender populations. Both of the states provide insight on how pervasive collateral consequence laws can be. In Texas and Pennsylvania, employment was the most significant factor in increasing recidivism rates; welfare benefits were also a priority in both states, while housing was negatively associated with increased recidivism rates in Pennsylvania and indeterminate in Texas. Originally intended to act as public safety measures, many of the laws are unrelated to the crime for which a person has been convicted or to any public safety purpose. As supported by my findings, there is little evidence that they act as a deterrent; rather, they can increase the recidivism rates of the affected populations.

On a state level, legislators need to revise or eliminate these barriers to societal reentry as much as possible. Collateral consequences should be tailored only to the purpose of public safety

and policymakers should avoid consequences with purely punitive aims. Implementation will be challenging, as these laws are applied on both the state and federal levels. While Pennsylvania has already taken steps to mitigate the impact, other states are behind.

Even if states do enact legislation, discrimination against former offenders could still be a reality. For instance, in the case of employment-related consequences, potential employers may still disregard applications indicative of a criminal record. Considering that discrimination is an inherent societal construct independent of legislation, combating this implementation barrier may not be easy to combat. A state reframing of collateral consequences was recommended to alleviate this barrier. Despite these challenges, I believe that there is an obligation to mitigate societal reentry for ex-offenders. Serving a prison sentence is already a traumatic experience; why make societal reentry traumatic as well?

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APPENDICES

Appendix I: Descriptions of Consequence Categories in the National Inventory of the Collateral Consequences of Conviction

Descriptions of Consequence Categories in the National Inventory of the Collateral Consequences of Conviction	
Consequence Category	Description
Employment	This category includes public employment, appointive office (not elective office), military service, volunteering, publicly regulated private employment, employment by licensed business entities, and employment as a manager or officer of a business. Volunteering and eligibility for appointive office are also included in the Political and civic participation category.
Business licensure and other property rights	This category includes liquor licenses; livestock, agriculture, and wildlife licenses; lottery and gambling licenses; licenses to operate care-giving or educational facilities; and, licenses to engage in specific industries. It also includes consequences affecting property rights, such as fines and administrative forfeitures, and corporate ownership interests.
Occupational, professional license, and certification	This category includes commercial drivers' licenses, pilots' and mariners' licenses, commercial hunting and fishing licenses, and most professional licensure requirements. Endorsements to operate school buses, multiple-person vehicles, and any other commercial vehicles on an ordinary driver's license are also included in this category
Government benefits	This category includes benefits in the form of welfare, health (e.g., Medicaid and Medicare), retirement, workers compensation, veterans, employee benefits, etc. It also includes immigration and travel restrictions.
Government contracting and program participation	This category includes Medicaid and Medicare program participation and general government contracting.
Government loans and grants	This category includes business loans and educational financial aid.
Registration, notification, and residency restrictions	This category includes two primary types of mandatory disclosure requirements: Registration and mandatory supervision requirements usually applicable to sex offenders, and public notification requirements that involve disclosing criminal history information to the general public or particular third parties, including victims and employers and schools. It also includes restrictions on residency in licensed community care facilities.

Housing	This includes occupancy in any form of housing, vouchers, housing subsidies, and subsidized housing, which are also included in the Government benefits category. Restrictions on residency in licensed facilities are coded in this category, and the Registration, notification, and residency restrictions category
Political and civic participation	This category includes voting rights, eligibility for jury service, public office (both elective and appointive office, but not public employment generally), and volunteer activities.
Education	This category includes educational program eligibility and financial aid, which are also included in the Government benefits category.
Judicial Rights	This category includes guardianships, executorships, and trusteeships; eligibility to inherit from crime victims; and limitations in subsequent civil proceedings (e.g., collateral estoppels and res judicata). Jury service is coded in the Political and civic participation category only.
Motor Vehicle Licensure	This category includes all classes of drivers' licenses not issued for commercial purposes. Recreational vehicle licenses and commercial drivers' licenses are not coded in this category.
Recreational license, including firearms	This category includes all non-commercial hunting and fishing licenses, firearms licenses, and recreational motor vehicle licenses.
Family/domestic rights	This category includes parental rights (e.g., custody or visitation), foster care, adoption, and name changes.

Source: U.S. Government Accountability Office

Appendix II: Summary Statistics of Controls

Appendix II: Summary Statistics of Controls, Texas	
Controls	Rate
State Imprisonment Rates (per 100,000):	
2013	2.2%
2014	2.2%
2015	2.1%
State Unemployment Rates (mean):	
2013	7.1%
2014	5.1%
2015	6.3%

Source: Bureau of Justice Statistics, Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86.

Appendix III: Summary Statistics of Controls

Appendix III: Summary Statistics of Controls, Pennsylvania	
Controls	Rate
State Imprisonment Rates (per 100,000):	
2013	31.5%
2014	31.0%
2015	30.3%
State Unemployment Rates (mean):	
2013	7.1%
2014	6.2%
2015	5.3%

Source: Bureau of Justice Statistics, Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86.

Appendix IV: Baseline Model, Texas

Appendix IV: Baseline Model, Texas

Variable	State Recidivism Rates		
	<i>Coefficients (standardized)</i>	<i>Standard Error</i>	<i>Significance</i>
Imprisonment Rate	-.105	.230	.034
Unemployment Rate	.241	1.12	.077

R-square value: .232

Appendix V: Baseline Model, Pennsylvania

Appendix V: Baseline Model, Pennsylvania

Variable	State Recidivism Rates		
	<i>Coefficients</i>	<i>Standard Error</i>	<i>Significance</i>
Imprisonment Rate	-.326	.075	.042
Unemployment Rate	.172	1.03	.063

R-square: .376