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Perspective:

Reconsidering Policy Barriers for Justice-Involved College Students



Authored by

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Each year in the United States, more than 700,000 people are released from prisons and jails (Davis et al., 2013). Many of them may decide to attend college, but they are likely to face unique challenges. A wide range of laws and institutional policies target college students who have previous involvement in the criminal justice system (called “justice-involved students”). In this piece, the major policy barriers faced by justice-involved students are identified and argued that such policies are harmful to students and incompatible with higher education’s goals for improving access and completion. By helping students to overcome barriers and by encouraging policy changes, school counselors, admissions officers, academic advisors, and student affairs professionals can play an important role in helping justice-involved students to be successful in college.

Driven by private foundations, state policymakers, community college leaders, and the Obama Administration, colleges across the country have embraced a completion agenda, particularly for underrepresented students (Kelly & Schneider, 2012). The goals of this agenda are to increase the number of graduates, to close educational attainment gaps between certain

groups, and to maintain a trained workforce that can compete in the global marketplace (Hauptman, 2012). Much effort has gone into fostering student retention through federal and state policies, such as financial aid, remedial education, transfer and credit portability, outcomes-based funding, grant-funded programs, and accountability systems (Kelly & Schneider, 2012), but justice-involved college students are not recognized in these efforts. Quite the opposite, my review of policies finds that higher education policymakers at the federal, state, and institutional levels appear intentional in *building* barriers that hinder justice-involved students’ abilities to complete college. By unveiling these sometimes hidden or ignored barriers, the goal is to bring awareness to the multi-faceted challenges faced by a potentially growing population of college students.

The term “justice-involved student” comes from the U.S. Department of Education’s (2016a) *Beyond the Box* report. “Justice-involved”—meaning involved in the criminal justice system—specifically avoids the stigmatizing labels commonly applied to this population and is necessarily broad to encompass a range of experiences. People with a history of arrests, juvenile crimes,



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misdemeanors, or felony convictions can be called justice-involved, as well as people who are currently or formerly incarcerated.

“Justice-involved” is used mainly to refer to a person with prior *felony* convictions. Since not everyone convicted of a felony has been incarcerated, the term “justice-involved” should not be conflated with “formerly incarcerated.”

Policy Barriers in Higher Education

It is estimated that 25% of Americans have some type of criminal record, and especially for the estimated 20 million Americans with felony convictions, criminal records last for life (Jacobs, 2015). The criminal record attaches to a person permanently, and it is the instrument that allows for countless forms of legalized discrimination, called collateral consequences, to persist long after a person is released from the criminal justice system, including the loss of employment, occupational licensure, housing, welfare benefits, voting rights, parental rights, privacy, or the ability to serve in the military, participate on juries, or hold public office, to name a few (Jacobs, 2015; Love, Roberts, & Klingele, 2013).

People with criminal records who become college students also face a range of collateral consequences that are specific to higher education, called barriers here, that have been previously undocumented or understudied. In this piece, an inventory of the major barriers faced by justice-involved students in U.S. higher education was conducted, which is significant in that there has been no

previous attempt to synthesize the vast assortment of higher education policies targeted at people with criminal histories. It is relevant now because it draws attention to a population of students that are not represented within the college completion agenda, at a time when the stories and experiences of justice-involved students increasingly appear in the media and in qualitative research (see Ayers, 2017; Custer, 2013a; Hager, 2017; Halkovic & Greene, 2015). For education professionals who rarely interact with justice-involved college students, this policy review may be surprising and hopefully initiates new discussions.

This review of policies relied on a broad range of sources. First, a search was conducted for research literature from the fields of higher education, criminal justice, legal studies, sociology, public policy, and more. Finding few studies on the topic, this search also considered non-scholarly sources, including laws, institutional policies, court cases, governmental reports, non-governmental organization reports, and news sources. Table 1 displays six categories of policies with corresponding policy examples, for which a hyperlink is provided. These examples are not meant to be representative of all policies within the category; instead, they offer readers the option to explore a sample of policies in more depth.

Admissions

In the past 15 years, colleges have increasingly added questions about criminal history on admissions applications such that

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most colleges now consider criminal history information in general admission decisions (Custer, 2016; Weissman et al., 2010).

Questions typically focus on felony convictions, but some institutions cast a wide net, requiring the disclosure of misdemeanors, juvenile crimes, arrests, and pending cases (U.S. Department of Education, 2016a). Researchers have found no evidence to show these admissions policies improve campus safety, as intended (see Custer, 2016), and several studies have found that justice-involved applicants are deterred from completing applications due to the stigma of disclosing their criminal history, leading to high levels of application attrition (Custer, 2013a; Rosenthal et al., 2015).

Most institutions rely on applicants to disclose prior misconduct by answering questions on admission applications, but some institutions go further by conducting criminal background checks. For example, Columbus State Community College requires students to order and pay for their own background checks (see Table 1 on page 54). Since 2007, the University of North Carolina system, which includes 17 public universities, has conducted criminal background checks on all applicants whose applications contain "triggers" or "red flags," such as not answering certain questions, inconsistent answers, unexplained time periods since graduation, or affirmative responses to the criminal history questions (see Table 1). As shown below, criminal background checks are increasingly used in higher education, from admissions to student employment to campus housing,

without evidence of cost effectiveness or impact on campus safety.

The admission of registered sex offenders is scrutinized heavily by institutions and state governments. Some institutions automatically deny admission to some or all categories of sex offenders (see Houston Community College and University of Florida in Table 1). According to one court case in Michigan, policies that deny admission to broad categories of offenders may violate the due process rights of students (Kowarski, 2010; "Lake Michigan College," 2011). Because of the lawsuit, Lake Michigan College changed its blanket admission ban on all sex offenders and agreed to conduct individual reviews of applicants. Some state laws also add requirements to the admission and registration process of registered sex offenders. In seven states, students who are registered sex offenders must register directly with campus police departments, which is more than what federal law requires, and in New Mexico, those students must also notify the college registrar of their sex offender status (Custer, 2017).

Advocacy organizations and the Obama Administration's Department of Education have suggested that colleges consider discontinuing the collection of criminal history information in the college admission process; the chief concern is the potential racial discrimination that could occur from the disproportionate number of marginalized people in the criminal justice system (Rosenthal et al., 2015; U.S. Department of

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Table 1
Policy Barriers for Justice-Involved Students in Higher Education

| Policy | Policy Examples (with Hyperlinks) |
|---------------------|--|
| Admissions | <p>Columbus State Community College, Students with History of Felony Conviction(s) Website</p> <p>University of North Carolina, Regulations on Student Applicant Background Checks Policy</p> <p>State University of New York, Admission of Persons with Prior Felony Convictions Policy</p> <p>Houston Community College, Convicted Sex Offender Policy</p> <p>University of Florida, Admission Reviews Website</p> |
| Financial Aid | <p>Florida Bright Futures Scholarship Handbook</p> <p>Georgia HOPE Scholarship Website</p> |
| Campus Housing | <p>Blinn College, Criminal History Record Check Requirement Policy</p> <p>Weatherford College, Background Check Requirements Policy</p> <p>Wichita State University, Housing Contract</p> |
| Student Employment | <p>University of Delaware, Human Resources Criminal Background Checks Policy</p> |
| Athletics | <p>Idaho State Board of Education, Student Athletes Policy</p> <p>California State University-Fresno, Athletics Recruitment Policy</p> |
| Additional Barriers | <p>Eastern Kentucky University, Registered Sex Offender Listing</p> <p>Seattle Central College, Registered Sex Offender Listing</p> <p>Moraine Valley Community College, Sex Offender Policy</p> |

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Education, 2016a; Weissman et al., 2010). As a result, a few higher education institutions have recently restricted the use of criminal history in admissions, including the State University of New York system (Rosenberg, 2016) and the University of Minnesota (Clarey, 2016), and in 2017, Louisiana became the first state to partially ban the practice at its public institutions (Roll, 2017). The Trump Administration has not, as of early 2018, issued any statements on this policy topic.

Financial Aid

With mixed results, financial aid has overall been shown to have positive effects on enrollment, retention, and completion (Bettinger, 2012). For justice-involved students, affording college without financial aid may be an insurmountable barrier to attending college, and students convicted of drug offenses, especially, face significant barriers in getting financial aid.

First, the Anti-Drug Abuse Act's (1988) Denial of Federal Benefits Program allows federal and state judges to deny all types of federal aid to people convicted of drug trafficking or possession charges (U.S. Department of Justice, n.d.), which is documented in an internal federal file against which all financial aid applicants are checked (U.S. Department of Education, 2015). No research has documented how many people have been denied federal financial aid under this law.

Then in 1998, Congress passed the Drug-Free Student Loan Provision to amend the Higher Education Act (1965), which rendered all

people convicted of certain drug crimes ineligible for federal student financial aid starting in 2001 (Crawford, 2005). A person convicted of a drug crime involving possession was ineligible for one year for the first offense, two years for the second offense, and indefinitely for the third. A drug sales conviction rendered a person ineligible for two years for the first offense and indefinitely for the second. After the one- or two-year suspension, individuals could resume eligibility by completing a drug rehabilitation program (Higher Education Act, 1965). Between 2001 and 2004, it was estimated that between 17,000 and 41,000 students lost eligibility for financial aid due to a drug conviction (U.S. Government Accountability Office, 2005). As a result, one study found youth with drug offenses delayed attending college for about two years after high school, yet the policy did not deter youth from committing drug crimes, as intended (Lovenheim & Owens, 2014).

In 2005, Congress amended the eligibility rule by rendering only students convicted of certain drug crimes while receiving federal financial aid to be ineligible for aid, following the same schedule of penalties outlined above (Deficit Reduction Act, 2005). Currently, therefore, individuals with drug convictions prior to receiving federal aid are not affected, but students who are on federal financial aid at the time they are convicted of drug crimes cannot receive additional aid until regaining eligibility (Higher Education Act, 1965).

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Finally, state financial aid policies also contain eligibility barriers. Merit-based state financial aid is often unavailable to justice-involved students. For example, students with any felony conviction are ineligible for Florida's Bright Futures Scholarship, and students with a drug felony conviction are ineligible for Georgia's HOPE awards for one term following the conviction (see Table 1).

Additional research is needed to quantify exactly how many states deny financial aid to justice-involved students.

Campus Housing

The scarcity of housing is one of the many crises facing people released from prison. People with criminal histories, especially drug and sex offenders, are routinely denied access to public and private housing (Love, Roberts, & Klingele, 2013), and many are forced to live with family, friends, or become homeless (Petersilia, 2005; Roman & Travis, 2004).

Despite evidence suggesting living on-campus improves student retention (Schudde, 2011), justice-involved students commonly face discrimination in on-campus housing. Some state statutes and state system policies prohibit certain people from living in campus housing, including sex offenders in Texas, South Carolina, South Dakota, and Tennessee, as well as drug offenders in South Dakota. After Texas passed a law in 2013 allowing colleges to access state criminal records databases for checking housing applicants, most Texas institutions implemented criminal background check policies and denied housing to most students with convictions (see Blinn and Weatherford Colleges in Table

1; Downing, 2013). But then, Texas went a step further in 2017 to ban most sex offenders from campus housing at public and private institutions (Raney, 2017). Even in states without such laws, many institutions conduct background checks on housing applicants and prohibit those with criminal histories from living in residence halls (see Wichita State University in Table 1).

Balancing the legitimate safety and security needs of residence halls with the housing needs of justice-involved students is a complex policy problem for higher education administrators. More research is needed to document trends in housing background check policies and to develop evidence-based criteria for determining who should and should not be permitted to live in residence halls.

Student Employment

Despite employment being one of the most critical factors for successful reentry, thousands of U.S. laws bar people with criminal histories from working in certain public and private sectors (Harris & Keller, 2005; Jacobs, 2015). Employers may also choose not to hire people with criminal convictions, which is a legally permissible practice known as discretionary employment discrimination (Jacobs, 2015). As the availability of public electronic criminal records has increased, more employers are using criminal background checking to bar justice-involved people from jobs (Jacobs, 2015; Love, Roberts, & Klingele, 2013). Higher education institutions are also increasingly

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requiring employees to undergo criminal background checks, including student employees (Owen, 2014). A survey of 132 institutions found 26% required criminal background checks for student employees, 87% for staff, and 40% for faculty (Hughes, Hertz, & White, 2013). For example, the University of Delaware conducts criminal background checks on all new employees, including undergraduate and graduate student workers (see Table 1). However, in a study of crime data from four states, there were no significant differences in campus crime rates before and after mandatory background checks were implemented for newly hired employees, regardless of the robustness of the background checking policies (Hughes, Elliot, & Myers, 2014). It is estimated that 80% of all undergraduate students hold a job while attending college (Riggert, Boyle, Petrosko, Ash, & Rude-Parkins, 2006), and for justice-involved students who need work, student employment may be the only viable option. If there is doubt in the effectiveness of student employee background checks, eliminating background checks could provide important employment opportunities for these students.

Student Athletes

Student athletes face a unique class of rules related to criminal history. For example, the state of Idaho requires all public institutions to collect and maintain criminal history information on student athletes and prohibits them from recruiting athletes with felony convictions (see Table 1). Institutions in other states maintain similar recruiting and

eligibility policies (see California State University-Fresno in Table 1; Hughes et al., 2015; Potrafke, 2006). In a recent survey of 567 athletics directors, few reported conducting criminal background checks on student athletes: 12 (2.09%) conducted checks on all athletes, 7 (1.22%) conducted checks on transfers only, 46 (8.01%) did not conduct checks but plan to start, while the remaining 506 (88.68%) did not conduct checks and had no plans to start (Hughes et al., 2015). While the National Collegiate Athletic Association (NCAA) has no eligibility requirements related to the prior criminal history of athletes, commentators have called on the NCAA to implement background checking policies, especially following stories of athletes with known criminal histories transferring to play at other institutions (New, 2014; Potrafke, 2006).

Additional Barriers

While the five categories of policies described above may constitute the most significant barriers in higher education, there are certainly others that require more investigation. For example, students have commented on not being able to participate in student organizations or activities due to stigmatization from their criminal histories (Tewksbury, 2013), but some institutions may restrict justice-involved students from participating in certain student activities. Justice-involved students are also likely to face difficulty studying abroad, participating in service-learning projects, and other activities that involve community engagement, work with children, traveling, or

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visiting places like schools, hospitals, or prisons. In addition, there is no available information on how international students with criminal convictions from their home countries fare in gaining legal status to study in the US, getting through the admissions process, or overcoming the other barriers described above. Additional research is needed to explore policies affecting justice-involved students in these areas of college student life.

Students previously convicted of sex offenses are vulnerable targets for special policies. In addition to the barriers to admission and registration mentioned above, hundreds of institutions maintain their own sex offender registry websites where the names, and sometimes photographs, of sex offender students are posted for campus community members to see (see Eastern Kentucky University and Seattle Central College in Table 1; Tewksbury, 2013; Tewksbury & Lees, 2006). Institutions have also created policies whereby sex offender students are subjected to regular surveillance by campus administrators (see Moraine Valley Community College in Table 1). Furthermore, at the state level, 31 states post where a registered sex offender is enrolled on sex offender registry websites, and nine states allow users to filter results by school name or address to view all registrants enrolled at an institution (Custer, 2017). These policies drastically increase the public exposure of these college students.

How to Support Justice-Involved Students

Taken together, the policies described above present a formidable challenge for justice-involved college students. At each stage of their college journey, these students face systematic barriers from gaining admission, to qualifying for financial aid, finding a room on campus, getting a job, playing sports, and beyond. Though policymakers and campus administrators argue these policies are necessary for campus safety reasons, the limited available policy research does not support such claims (Custer, 2016; Hughes, Elliot, & Myers, 2014). Therefore, education professionals should be critical of these policies' unintended negative consequences on student success. Next, an explanation of how the policies are harmful to students, and then recommendations are offered to education professionals on supporting justice-involved students.

Finding Alternatives

Many of the policies described above are insurmountable by design, like total bans on sex offenders in campus housing or ineligibility for financial aid. To state the obvious, these policies are quite literally barriers to student success because justice-involved students are prohibited from benefiting from campus programs and services that are designed to support students. It should be no surprise, for example, that a student who is ineligible for state financial aid, who is not permitted to live in campus housing, and who cannot get hired as a student employee has the deck stacked against him. Research is not needed

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to conclude that many students are denied support because of these policies, but future research is needed to estimate how many students are affected by these policies and the extent to which justice-involved students can be successful without the programs they are denied.

The task for education professionals, then, is to help students find alternatives to the services and programs that they are denied. When prospective students seek admission, school counselors and admissions officers should be aware of which institutions in their community or state require the disclosure of criminal history; then, they should be prepared to explain the often-unpublished criminal history review process, including advice on how to succeed in gaining admission (see Custer, 2016). When students cannot get hired on campus, career services professionals should be knowledgeable about employers in the community who hire people with criminal history (e.g., employers who take advantage of tax credits or federal bonding for hiring people with criminal history; see Rakis, 2005). When students are blocked from living on campus, housing professionals should be aware of the background checking practices of local housing communities and should refer students to properties that are open to people with criminal histories. When students are denied financial aid, financial aid officers should be able to recommend alternate scholarship programs and funding sources. If knowledgeable about the policies and their alternatives, education professionals can be

well-positioned to help students overcome the barriers.

Preventing Stigma

For students who are not entirely blocked by policies, the literature offers another explanation of how these policies can be harmful. Research suggests that stigma is a tangible consequence for some justice-involved students dealing with these policies. Stigma is often described as a characteristic, mark, or label that designates a person as “flawed, compromised, and somehow less than fully human” (Dovidio, Major, & Crocker, 2000, p. 3), and in this case, the criminal record is the stigmatizing characteristic. In a study of college applicants in the State University of New York system, it was estimated that two out of every three applicants with prior felony convictions who started an admission application did not complete it, potentially to avoid the stigmatizing admission process that ensued (Rosenthal et al., 2015). In a case study of one university applicant who withdrew her admission application, it was clear that stigma played a role in her decision to drop out (Custer, 2013a). In a qualitative study of admissions essays required of applicants with criminal history, applicants reported feeling judged, fear of losing education opportunities, anger about having to relive and describe past crimes, embarrassment, and lowered self-esteem because of the application process (Custer, 2013b). From these cases, it appears that the admission process is a powerful source of stigma that deters prospective college students.

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Many justice-involved students make it through the admission process or attend colleges that do not inquire about criminal history. Once enrolled, they face stigmatization from peers, faculty, and administrators each time they are identified as having a criminal record, like when applying for campus jobs or financial aid. In perhaps the first study of justice-involved college students, Copenhaver, Edwards-Willey, and Byers (2007) explicitly studied how four students experienced and coped with stigma. The participants reported fear of being identified and described the difficulty of concealing their prison tattoos and deciding when and when not to disclose their history for fear of judgment (Copenhaver, Edwards-Willey, & Byers 2007). Similar experiences have been reported in subsequent studies (Halkovic & Greene, 2015). Two formerly-incarcerated, African-American male students reported being stigmatized by pejorative labels, including ex-offender, convict, and criminal, “which negatively affected some peer interactions, limited options for campus involvement, and all-too-often shaped faculty members’ perceptions of the students (Strayhorn, Johnson, & Barrett, 2013, p. 84). The students were victims of stereotyping, racial micro-aggressions, and lowered expectations from faculty, staff, and peers (Strayhorn, Johnson, & Barrett, 2013). In addition, at institutions that maintain campus-based sex offender registries, students who are registered sex offenders have reported intense social isolation and vulnerability, particularly related to the fear of being identified by others (Tewksbury, 2013).


There has been such little research on the experiences of justice-involved college students that these accounts stand out as troublesome. Stigma appears to be a common experience, and the policies identified above—especially admissions—are regularly cited by students as sources of stigma. It is the continual unveiling of a student’s criminal history at different points in the college journey that harms these students, making them feel exposed and vulnerable. For campus administrators, conducting an inventory of all the points at which a student must disclose criminal history would be informative. From there, reducing the number of disclosure points could go a long way in supporting justice-involved students by protecting their privacy, dignity, and basic right to learn in a judgement-free environment.

To protect justice-involved students from stigmatization, policy changes are necessary. Admissions officers should consider delaying or eliminating the collection of criminal history information, as some institutions have recently done (Clarey, 2016; Rosenberg, 2016). Campus police departments should remove campus-based sex offender listings from their websites, leaving only the links to state sex offender registries, as required by federal law (U.S. Department of Education, 2016b). Campus housing professionals should stop conducting criminal background checks on all students, except when required by state law. Similarly, human resources departments should stop conducting background checks on all student employees, except for those

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who apply to sensitive positions. In most of these cases, campus administrators established the policy barriers for justice-involved students, which means they are equally empowered to change or eliminate them. Making these policy changes would constitute significant advances in the support of justice-involved students.

Conclusion

The purpose of this essay was to raise awareness of the policy barriers faced by justice-involved college students, to critique them, and to offer education professionals advice on how to support students. When considering the over 20 unique policies identified above, it should be clearer now how challenging it could be for some students to gain admission, secure financial aid, get a campus job, live on campus, and participate in athletics at higher education institutions across the U.S. Reducing such challenges should be a goal for all institutions seeking to improve college access and completion. Eliminating or changing the policies would be the most direct method for breaking down barriers. When the average practitioner is not empowered to change institutional policies, they can still support justice-involved students by learning about their campus policies, advocating for students in a judgement-free manner, helping them find alternative solutions when barriers are insurmountable, and bringing this discussion to their campuses and professional organizations. 

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