

**CLOSING THE DOORS TO HIGHER EDUCATION:
ANOTHER COLLATERAL CONSEQUENCE OF A CRIMINAL CONVICTION**

EXECUTIVE SUMMARY

In recent years, colleges and universities in the United States have increasingly included criminal history background checks in their admissions processes and have started to create exclusionary policies. These policies are being implemented despite the fact that there is virtually no evidence to suggest that the past criminal histories of students are relevant risk factors that affect the rate of crime on college campuses. Although these policies will not make campuses any safer, such policies do carry with them some very significant and dangerous consequences. In their haste to make campuses safer, college admissions officers are adopting policies that threaten to make the community at large less safe and more racially divided.

This working paper discusses various aspects of the growing practice of the use of criminal history background checks in the college admission practice. We first consider the data on crime on campus which shows that colleges remain remarkably safe places particularly when compared to the larger community. We review the available, albeit limited data that suggests that crime on campus is more likely to be committed by students without criminal records than students with prior records.

The paper reports the results of surveys conducted by the Center for Community Alternatives and the National HIRE Network that show the lack of standards within states, including state university systems, and across states as to whether or not to screen for a criminal history, and how use information gathered through background checks is used.

Finally, we raise concerns that because racial disparities figure prominently in our criminal justice system, the practice of excluding college applicants who have criminal histories will inevitably impact prospective students of color more than their white counterparts. Thus, the use of criminal records to screen out prospective students is not race neutral, but rather encroaches on the civil and human rights of people with criminal records. As education is clearly associated with lower recidivism rates, impeding people's ability to get a college education undermines public safety in the larger society.

We conclude the discussion by pointing to several successful model programs that offer examples about ways to help people with records access higher education as well as recommendations for parsimonious use of criminal records in determining admission decisions.

There is growing support for returning higher education to correctional facilities. It is ironic then, that as higher educational opportunity doors are reopening in prisons, they are closing in the community. Because of the tragic racial disparities in the U.S. criminal justice system, policies and practices that exclude people with criminal records from institutions of higher learning will set back the gains of the civil rights struggles to open higher education to all people, regardless of race or ethnicity.



national **HIRE** network

CLOSING THE DOORS TO HIGHER EDUCATION: ANOTHER COLLATERAL CONSEQUENCE OF A CRIMINAL CONVICTION¹

Introduction

In recent years, colleges and universities in the United States have increasingly included criminal history background checks in their admissions processes and have started to create exclusionary policies based on these background checks. Although colleges have a duty to consider a range of factors that would affect the safety of their campus communities - the students, faculty and employees - a cavalier use of criminal records may generate a false sense of security. As discussed in this paper, there is virtually no evidence to suggest that past criminal histories of students are related to crime on college campuses, and thus policies to exclude such students will not make campuses any safer. The unfettered use of criminal records to screen out prospective students will have unintended, but highly significant, policy consequences that undermine the gains made over the last 30 years in extending higher education opportunities to people from all walks of life, particularly people of color. Exclusionary policies or practices would also prohibit people with past criminal justice involvement from participating in one of the most effective crime prevention interventions - a college education.

It is increasingly obvious that racial disparities figure prominently in our criminal justice system. Thus, the practice of excluding college applicants who have criminal histories will inevitably impact prospective students of color more than their white counterparts. It is our contention that the use of criminal records to screen out prospective students encroaches on their civil and human rights and also undermines public safety in the larger society.

College campuses have long been viewed as “Ivory Towers,” isolated from the vagaries of daily life and immune from many of its problems, including crime. However, in 1991, in the throes of a general “tough on crime” political environment, Congress passed the Crime Awareness and Campus Security Act (known as the Clery Act) that required colleges and universities to track and report campus crime statistics, post security policies and make timely warnings. As with most recent criminal justice legislation, the Clery Act was named for an individual victim of a heinous, but aberrant, crime, in this case, Jeanne Clery, a 19-year old Lehigh University College freshman who was murdered in her dormitory. The parents of Jeanne Clery mounted a campaign to create a law that would provide students and their families with information about the extent of crime on campus so that the relative safety of a campus could be

¹ This paper was written by staff of the Center for Community Alternatives, Marsha Weissman, Ph.D., Executive Director, and Alan Rosenthal and Patricia Warth, Co-Directors of Justice Strategies, and the staff of the National HIRE Network of the Legal Action Center, Roberta Meyers-Peebles, Director and April Meyers Frazier, Deputy Director. Glenn Martin, formerly Co-Director of the HIRE Network and now the Associate Vice President of Policy and Advocacy for the Fortune Society, also contributed to the development of this paper. This paper was produced through the generous support of the Fulfilling the Dream Fund.

considered as a factor in the college selection process. Data reported in compliance with Clery Act requirements show that the Ivory Tower is not, in fact, immune from crime. Yet contrary to stereotypes, the crimes committed on campus tend to involve members of the student body, who, like the student who killed Jeanne Clery, have no criminal record.

Despite the lack of evidence that students with criminal records commit crimes on campus at a rate higher than other students, a few high profile crimes and concern about institutional liability have led to admissions policies that now require prospective applicants to disclose their criminal records and even their secondary school disciplinary history. The Common Application, used by more than 300 universities and colleges, added questions about both criminal convictions and school disciplinary records to their 2006-2007 application (Jaschik 2007). Many individual colleges that do not use the Common Application also include such questions on their applications.

In this paper we first review the data on crime on college campuses, including data generated from surveys of college admissions practices in New York State and North Carolina conducted by the Center for Community Alternatives (CCA) and the National H.I.R.E. Network of the Legal Action Center (HIRE Network). We then discuss how the use of a criminal record to bar people from college undermines the advancements of the civil rights movement and jeopardizes public safety. We conclude with examples of model programs that support people with criminal records to obtain college degrees and suggestions for more productive ways to ensure safety on college campuses.

Safety, Crime and College Campuses

While college campuses are not immune from crime, the data show that college campuses are safe places, especially when compared to the community at large. This is particularly true for serious crimes that involve personal violence. Violent crime on campus is rare, and the few college students who are victims of such crimes are mostly victimized off campus by strangers. Rape and sexual assault are the only crimes where there are no statistical differences between college students and non-students (Hart, 2003; Baum & Klaus 2005).

The U.S. Department of Education 2001 Report to Congress, "The Incidence of Crime on the Campuses of U.S. Postsecondary Education Institutions," states that the overall rate of criminal homicide at colleges and universities was .07 per 100,000 students enrolled, compared to a homicide rate of 14.1 per 100,000 among young adults in the society at large. This means that college students are 200 times less likely to be the victim of a homicide than their non-student counterparts. The Department of Education (2001) concluded that "students on the campuses of postsecondary institutions [are] significantly safer than the nation as a whole" (p.5). Moreover, between 1995 and 2005, violent crime on campus declined by 54 percent, a rate that exceeds the decline among the general population (Carr 2005).

College students are less likely to be victims of violent crime than the general population (Baum & Klaus 2005). A comparison of the victimization rates for student and non-student young adults between the ages of 18 to 24 showed that the average annual rate of violent victimization for students was 61 per 1,000 compared to a rate of 75 per 1,000 non-students. The difference was greatest for females, with female non-students more than 1.5 times more likely to be a victim of a violent crime than female students. Male college students were more likely to be a victim of a violent crime than female students, and male students and non-students had an equally likely chance at being a violent crime victim (80 per 1,000).

With the exception of rape and sexual assault, students who were victims of violent crimes were more often victimized by strangers (58%) (Baum & Klaus 2005). In contrast, almost 79 percent of sexual assaults were committed by someone known to the victim. Fisher et.al's (2002) survey of female college students who had been sexually assaulted showed that most of these crimes were committed by classmates, friends or [ex] boyfriends.

An examination of crimes committed on campus as reported by the U.S. Department of Education reveals behaviors that have long characterized the college environment. The majority of crimes are related to alcohol and drug-use, either simple violations of use of substances or other crimes that have been associated with inebriation (National Center on Addiction and Substance Abuse at Columbia University 1994), including what the American College Health Association (ACHA) has termed "celebratory violence" (i.e., rioting after school sports events) (Carr 2005, p.5). Serious crimes have also been associated with alcohol abuse. The combination of alcohol abuse and hazing has resulted in serious injury or death (Nuwer 1990). Alcohol abuse figures prominently in sexual assault and gang rape, where the perpetrators are often members of a fraternity or a sports organization (Benson et al. 1992; O'Sullivan 1991).

Research and media reports about crime on campus are notably silent on the prior criminal history of perpetrators, suggesting that students with criminal records do not pose unique risks to campus safety. Bromley (2005) conducted a content analysis of articles that appeared in the Chronicle of Higher Education between 1989 and 2001 covering 33 campus related murders. While the articles reported on the circumstances of the crime and victim and perpetrator characteristics such as gender, campus status (e.g., employee, student, faculty, visitors), the criminal record of the perpetrator was not mentioned. Given the media's predilection for highlighting an offender's criminal record when such is present, the absence of such information suggests that a past criminal history was not a relevant factor for crime on campus.

One of the few studies that looked at the extent to which students with criminal records commit crimes on campus was conducted by the University of North Carolina (UNC) following the murders of two students at the University of North Carolina campus at Wilmington by two students with prior criminal records. The Task Force on the Safety of the Campus Community (2004) found that the UNC campuses were very safe, with a crime rate for UNC campuses only one-sixth of the statewide crime rate. Between July 1, 2001 and June 30, 2004, UNC campuses with an overall enrollment of 250,000 reported a total of 1,086 campus crimes. Forty-nine percent (49%) or 532 of these crimes were committed by a student. Of the students who were involved in crime, only 21 or 4 percent were students who had a prior criminal record.

Other research and literature reviewed for this paper also did not identify students with criminal records as a campus safety concern. Rather the indicators of criminal behavior were drinking, fraternity memberships, location of the campus, and inadequate campus security (Fisher 1995; Fisher et al. 1998; Fisher & Cullen 2000; Sanday 1992; Smith 1988; Security on Campus 2000; Higher Education Center for Alcohol and Other Drug Prevention 2001; Gregory & Janosik 2003; Benson et al. 1992; O'Sullivan 1991; Nuwer 1990).

Criminal Records: Inclusion, Exclusion and College Admissions Policies

College admission policies regarding criminal record screening and background checks vary across and within states. Several state college systems do not inquire as to whether prospective students have a criminal record. For example, Oregon State universities and

community colleges, California state colleges and universities and University of Massachusetts campuses do not ask prospective students about past offenses. Diane Saunders, Director of Communications of the Oregon University State system, in an interview with the Gainesville Sun said: “The state concept is that people have a right to go to school” (Crabbe 2007).

Despite data that suggest that crime on campus is not disproportionately committed by students with criminal records, colleges and universities across the country are increasingly denying or discouraging people with criminal records from applying and attending college. Policies and practices vary not only among states, but also within states. Examples of state university systems that ask about criminal convictions include North Carolina, Florida and New York.

North Carolina

In response to one of the few documented incidents of a violent crime committed on campus by students who had prior criminal records, in 2006, the University of North Carolina established uniform admission standards across its 16 public, four-year institutions of higher learning. All sixteen schools ask standardized questions about an applicant’s prior criminal history. The colleges use committees to review and evaluate applicants with criminal records and decide on admission.

In response to a 2007 telephone survey of North Carolina State Universities conducted at the direction of CCA and the HIRE Network, all admissions offices indicated that a criminal record does not result in an automatic rejection from a state school. Some, but not all, schools indicated that they would inform prospective students if their criminal record was the reason for their rejection, and five have an appeals process for students who are denied admission because of their criminal records. In contrast, the North Carolina Community College System has an “open door” admission policy. The policy states that all applicants who have graduated high school or are at least eighteen years of age shall be admissible. Finally, a review of the application forms of the 44 private four-year colleges and universities in North Carolina revealed that all but six asked about an applicant’s criminal record. A telephone interview with admissions officers at 22 of these schools indicated that special reviews of most applications that report a criminal record are conducted by the college prior to acceptance. The majority of schools will inform the individual if the criminal conviction was the reason for the denial of admission and allow the person to appeal that denial.

New York

The results of a 2006-2007 telephone survey conducted by CCA and the HIRE Network showed there were considerable variations between public and private institutions’ admissions policies and consideration of applicants with criminal records. New York State reflects how admissions procedures can vary from campus to campus within a state university system. One community college in upstate New York refuses admission to anyone who lives outside of the county who had been convicted of a felony offense. Another State university requires formerly incarcerated persons to obtain letters of reference from the superintendents of the correctional facilities from which he or she was released. One private college indicated that final admission decisions for people with criminal records rested not with the academic staff, but rather with the campus public safety director. In contrast, there are no barriers to admission in the New York

City public post-secondary school system, the City University of New York (CUNY).² Several CUNY schools, in fact, have special programs to support the efforts of formerly incarcerated people to matriculate.

Florida

The University of Florida application asks people to disclose their criminal records. Those applications that indicate a criminal history are then reviewed on a case-by-case basis by a special admissions review committee. However, there is no uniform policy across the state. A local community college in Gainesville Florida, Santa Fe Community College, bars people with felony convictions from enrolling until they have been out of prison for 6 months or have met their probation requirements. In the 2006-2007 academic year, Santa Fe received 78 applications acknowledging a criminal record and 12 percent of these applicants were denied admission. Over the same time period, the University of Florida at Gainesville received 200 applications noting a criminal record and denied admission to one percent of these applicants (Crabbe 2007). Both schools also had policies that deferred admissions pending additional information, or completion of probation.

Excluding People with Criminal Records from Higher Education: A Troubling Trend

A confluence of forces has combined to increase the use of criminal records to screen people out of college admissions. The U.S. became increasingly punitive in the last quarter of a century reflected by the increased use of incarceration, longer sentences and harsher conditions of confinement as well as stricter probation and parole conditions. The barriers to community reintegration increased on a range of social domains from voting (Uggen & Manza 2002), to employment (Pager 2007; Holzer et al. 2002), to housing (Roman & Travis 2004), to public benefits (Government Accountability Office (GAO) 2005), and now to higher education.

In the area of higher education, the federal government barred the use of Pell grants that supported higher education in prison, and many states soon eliminated their tuition assistance programs for prisoners as well. From 1998 to 2006, the federal Higher Education Act precluded people with drug convictions from receiving federal financial aid.³

An array of concerns may account for increased scrutiny of applicants' behavior. Fear of civil liability for negligent admission of a "dangerous" student (one who has a criminal record), may have motivated some overly cautious college admissions officers to adopt policies that require screening for criminal histories. The questions on the Common Application as well as applications from many individual colleges ask about convictions for misdemeanors, felonies or "other crimes." In addition to questions about criminal history, college applications including the Common Application have also included questions about a prospective applicant's secondary school disciplinary record, i.e. school suspensions or expulsions. In the case of the Common Application, the secondary school counselor is asked to provide information about crimes and

² However, as recently as 2007, CUNY had begun screening people convicted of sex offenses.

³ New rules passed by Congress in January 2006 now allow students with past drug convictions to apply for federal financial aid, but the law continues to bar students convicted of drug offenses while in college from receiving federal financial aid.

school disciplinary problems.⁴ College admissions officers can and do use Google, MySpace, Facebook and other Internet/social marketing sources to obtain background information on a prospective applicant (Barnes & Mattson 2007). An April 1997 article in the *New York Times* (Pappano 2007) quotes Boston College's Director of Undergraduate Admissions as stating that while most cases of serious crime on campus involve students whose applications showed no sign of problems, he nonetheless scours applications for "the slightest sign" of trouble before admitting a student. Finally, with the increase in the number of people applying to college, a criminal history becomes a short cut to reducing the number of applications that have to be reviewed (Pappano 2007).

Concerns about liability have been fueled by what Lake (1999) has described as the gradual application of typical rules of civil liability to institutions of higher education and the decline of insulating doctrines, such as *in loco parentis*, which traditionally protected institutions of higher learning from scrutiny in the legal system. However, in order to incur liability under current legal standards, a college must breach its duty to adopt measures that protect its students from "reasonably foreseeable" acts of another student. With the standard for liability set so high, the reality is that few, if any, institutions could be held liable for failure to screen out a student with a prior criminal history, even if the history involved a violent crime.⁵ In *Eiseman v. State*, 70 N.Y.2d 175, 191 (1987), the New York Court of Appeals declined to hold a state university liable after one of its students, Larry Campbell, a person with a prior criminal record, enrolled as a student and subsequently murdered two students. The Court of Appeals recognized that the imposition of liability is outweighed by "*the value of education-both as an escape from society's underclass, and as a benefit to the public generally*" as well as the public policy which has as its objective "*rehabilitating and reintegrating former inmates in the hope that they will spend their future years productively instead of returning to crime.*" *Id.* at 191. The Court made clear that, Campbell, even with his prior criminal history, "*could have lived anywhere he chose, and otherwise enjoyed the right of other citizens, including the right to be free of unfair discrimination by reason of prior arrests and imprisonment.*" *Id.*

⁴ While beyond the scope of this paper, the numbers of young people suspended or expelled from schools in the U.S. is staggering, with criminal justice and school disciplinary records negatively reflecting disproportionately upon students of color. By 2000, there were almost 3 million students a year suspended or expelled from school, representing 7 percent of the U.S. student population. Although African American students comprise 17 percent of the total U.S. student population, they make up almost 33 percent of those suspended from school (Skiba, et al. 2002).

⁵ Merely being aware of a student's prior criminal record does not make it "reasonably foreseeable" that such student will offend against a fellow student in the future. A search of U.S. case law produces a dearth of plaintiffs who have prevailed on such a theory of liability. The analysis in such cases, as *Eiseman v. State*, 70 N.Y.2d 175 (1987), makes it clear that such a theory of liability is not likely to prevail. Thus, fear of a law suit by a student who is injured if assaulted by another student, predicated upon the alleged negligent admission by the college of that student because such student had a criminal record is hardly cause for alarm, nor should it justify a policy of screening out applicants because of a criminal record. The fundamental analysis of the Court in *Eiseman* is worthy of note: "*the underlying premise that, once released, Campbell by reason of his past presumptively posed a continuing, foreseeable risk of harm to the community is at odds with the laws and public regarding the release of prisoners. Consistent with conditions of parole, an individual returned to freedom can frequent places of public accommodation, secure employment, and if qualified become a student. On any other theory, former inmates cannot be returned to society without imposing on those who open doors to them the risk of absolute liability for their acts.*" *Id.* at 191.

Excluding People with Criminal Records from College: Civil Rights and Public Safety

There are two main factors to consider in the creation of policies that would screen college applicants for a criminal record: the disparate impact of the criminal justice system on minorities and the role of higher education in reducing recidivism and opening the doors to economic and social advancement.

The Criminal Justice System and Racial Disparities

In 2004 alone, more than one million people were convicted of felony offenses in state courts. Almost 40 percent of those convicted were African American, far exceeding their 12 percent representation in the U.S. population at large (Durose & Langan 2007). The disparate enforcement of drug laws in communities of color is a significant contributor to these differences. It is well documented that use of drugs does not differ by race and ethnicity (SAMHSA 2005), yet 62 percent of people incarcerated for drug crimes are black (Human Rights Watch 2000). Because so many people from communities of color are caught in the criminal justice system, the imposition of institutional barriers, such as admissions policies that would screen out people with a criminal record, will in effect constitute a return to race-based discrimination in higher education. In particular, young, college age, black men (ages 20-30) have significantly higher rates of contact with the criminal justice system than other racial groups. Disparate criminal justice system treatment of young people of color begins in the schools, a phenomena known as “the school-to-prison pipeline” (Wald & Losen 2003) and continues at every stage of the system (The Sentencing Project 2003). The higher levels of deployment of police in communities of color, racial profiling and “stop and frisk” practices bring disproportionate numbers of young people of color into the criminal justice system (Markowitz & Jones-Brown 2000; New York Attorney General 1999.) As a result of these and other disparities, an estimated 1 in 3 black men ages 16-34 have a criminal record, more than 10 percent of black men in that age group are incarcerated and roughly twice those numbers are on probation or parole (Harrison & Beck 2005).

The criminal justice system has created a new divide in the U.S. Prior to *Brown v. Board of Education*, 347 U.S. 483 (1954), overt racial discrimination was accepted in many social domains, including education. Today, racial discrimination and exclusion are perpetuated and justified under the guise of ostensibly race neutral criminal justice policies.

The use of a criminal record has already had an impact on the ability of low income students, many of whom are students of color, to get a college education. Until 2006, Section 484, Subsection (r) of the 1998 Amendments to Higher Education Act of 1965 denied or delayed eligibility for financial aid to people with drug convictions. A GAO report (2005) determined that about 20,000 students each year were denied Pell Grants and 30,000-40,000 lost out on student loans because of this federal law. Wheelock and Uggem (2006) concluded, “*Relative to Whites, racial and ethnic minorities are significantly more likely to be convicted of disqualifying drug offenses (U.S. Department of Justice 2003) and significantly more likely to require a Pell Grant to attend college (National Center for Education Statistics 2000). It is therefore plausible that tens of thousands have been denied college funding solely on the basis of their conviction status*” (p. 23). Thus, while screening of prospective college applicants for criminal records may appear to be race neutral, the racial disparities in the criminal justice system means this practice has the potential of having significant racially exclusionary effects.

The combination of exclusions of people with criminal records and racial disparities throughout the criminal justice system has resulted in an American tragedy: there are more young African American men in prison in the United States than are enrolled in college (Justice Policy Institute 2002).

Absent clear standards that circumscribe the use of criminal history information, screening practices will become the catalyst for a new age of segregation in higher education and in society in general. *Brown v. Board of Education* sought to eradicate the devastation that comes from segregation: “*To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.*” (*Brown v. Board of Education*, 347 U.S. 483, 494 (1954)). This is true whether the basis for exclusion is race itself, or a criminal conviction that simply serves as a surrogate for race.

Higher Education & Promotion of Public Safety

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

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

Higher education is also a pathway to a productive, healthy and fulfilling life. It is strongly associated with improved employment prospects and future earnings. The Center for Labor Market Studies at Northeastern University found a clear relationship between employment rates and level of education for African Americans. Higher education significantly increases employment rates among African Americans with 86 percent of college educated African

Americans employed compared to 57 percent of high school graduates and a mere 33 percent of high school dropouts (Sum et al. 2007).

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

There are larger social benefits associated with increases in higher education ranging from the building of new knowledge to helping people become better parents, more informed voters and more engaged citizens (Joint Economic Committee in January 2000).

Reintegrative Justice: Making College Accessible to People with Criminal Records

Rather than excluding people with criminal records, colleges and universities can fulfill their commitment to equal opportunity, a cornerstone of American principles, by using higher education as a catalyst to reduce recidivism and improve society. The purpose of education was clearly articulated by Chief Justice Earl Warren in the 1954 *Brown v. Board of Education* decision:

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

Two years later, in *Hawkins v. Board of Control*, this same purpose was applied to higher education (See *Hawkins v. Board of Control*, 350 U.S. 413, 414 (1956)).

Model Programs

There are several successful model programs that offer guidance regarding ways to help people with records access higher education:

- C **The College Initiative:** The College Initiative (the Initiative) was created in 2002 by Episcopal Social Services to help people enroll in college following their release from prison. In its first four years, the Initiative helped 167 former state prisoners enroll in 27 different colleges and universities in New York. Given that most prisoners in New York return home to New York City, College Initiative participants typically enroll in a CUNY school. To help ease the return to school, the Initiative offers a preparatory program called "Bridge to College," that helps students, most of whom have been out of school for many years, refresh their verbal and math skills. Sixteen students graduated from college between 2002 and 2006 (Mendez 2006).

- C The College and Community Fellowship Program (CCF): CCF is a not-for-profit organization housed at CUNY. Its mission is to help formerly incarcerated women apply to and complete college and graduate school. It provides mentoring, tuition and academic support to help formerly incarcerated people make the transition to academic life. It provides a small stipend to participants each semester as well as an array of social supports to help participants address other facets of reentry including family reunification, and balancing school, family and work. Between 2000 and 2008, 234 people have enrolled in college through CCF. To date, 14 people have earned Associate's degrees, 49 have earned Bachelor's degrees, 30 were awarded Master's degrees, and 1 participant has earned a Doctoral degree. The recidivism rate among participants is less than one percent.
- C (ASI) Project Rebound: One of the nation's oldest higher educational support programs for formerly incarcerated people, Project Rebound was founded in 1967 by Professor John Irwin, a noted criminologist and formerly incarcerated person. The project operates out of San Francisco State University providing special admissions services for people with criminal records (people leaving jail and prison and people in pre-trial court diversion). The admissions process can begin while someone is incarcerated. The program provides counseling on balancing academic responsibilities with the responsibilities of parole or probation; making the transition from a secure institution to academia, and orienting new students to the rules of the university.
- C Second Chance Program: This program is a part of the City College of San Francisco and recruits, enrolls, and supports people with criminal records in pursuing an academic degree. It orients students to colleges, helps them negotiate the registration process, and assists with tutoring, financial aid, and financial supports that help defray the cost of books, transportation and meals.

Recommendations for Parsimonious Use of Criminal Records

There is growing support for returning higher education to correctional facilities. The Second Chance Act which passed Congress on March 11, 2008 and the Senate and House versions of H.R. 4137, the College Opportunity and Affordability Act of 2007 all include provisions that improve access to higher education for people during their incarceration. It is ironic then, that as the doors to higher educational are reopening in prisons, they are closing in the community. Excluding people with criminal records from attending college will only serve to create a false sense of security, given what we know about the commission of crimes on campus. Sensible and effective efforts to increase public safety include education and discussion among students on campus about excessive use of alcohol, education and social marketing about what constitutes healthy and consensual sexual relationships, creating campus-wide responses to hate crimes, and making changes to the physical environment of a college, e.g., improving security in dormitories. Barring people with criminal records from attending college will not improve campus safety, but would undermine public safety in the larger community. Finally, because of the tragic disparities in the U.S. criminal justice system, policies and practices that exclude people with criminal records from institutions of higher learning will set back the gains earned though the long and arduous efforts of civil rights activists to open higher education to all people, regardless of race or ethnicity.

References

- Barnes, N. and Mattson, E. (2007). *The Game Has Changed: College Admissions Outpace Corporations in Embracing Social Media*.
<http://www.umassd.edu/cmr/studiesresearch/blogstudy3.cfm>
- Baugh, J. (2000). Racial identification by speech. *American Speech* 75: 362-364.
- Baum, K. and Klaus, P. (2005). *Violent Victimization of College Students*. Special Report, Bureau of Justice Statistics. Washington, D.C.:U. S. Department of Justice.
- Benson, D., Charlton, C. and Goodhart, F. (1992.) Acquaintance rape on campus: A literature review. *College Health*, 40, 157-164
- Bromley, M. L. (2005). Campus-Related Murders: A Content Analysis Review of News Articles Paper presented at the Annual Conference of the Southern Criminal Justice Association.
http://www.dcf.state.fl.us/campusSecurity/docs/Campus_Related_Murders050907.pdf
- Carr, Joetta, L. (2005 February). *Campus Violence White Paper*. Baltimore, MD: American College Health Association.
- Chase, J. and Dickover, R. (1983). University education at Folsom prison: An evaluation, *Journal of Correctional Education* 34, 92-96.
- College and Community Fellowship.(2007).CCF Facts. <http://www.collegeandcommunity.org/>
- Crabbe, Nathan. (2007, August 21). UF, SFCC ask applicants about crime. *The Gainesville Sun*
<http://www.gainesville.com/article/20070831/NEWS/708310330>
- Durose, M. R. and Langan, P. A. (2007). *Felony Sentences in State Courts, 2004*. Washington, D.C.: U.S. Department of Justice.
- Fine, M., Boudin, K., Bowen, I., Clark, J., Hylton, D., Martinez, M., Roberts, R., Smart, P., Torre, M., and Upegui, D. (2001). Changing Minds: The Impact of College in Prison.
http://www.gc.cuny.edu/studies/studies_index.htm.
- Fisher, B. S. (1995). Crime and fear on campuses. *The Annals of the American Academy of Political and Social Science*. 539, 85-101.
- Fisher, B. S. Sloan, J.J., Cullen, F.T., and Lu, C. (1998). Crime in the ivory tower: The level and sources of student victimization. *Criminology* 36, 671–710.
- Fisher, B. S., and Cullen, F.T. (2000). Measuring the sexual victimization of women: Evolution, current controversies, future research. (Vol 4). *Measurement and Analysis of Crime and Justice*,

Criminal Justice 2000 , National Institute of Justice. Washington, D.C., U.S. Department of Justice.

Fisher, B.S., Hartman, J. L. Cullen, F.T., and Turner M. G. (2002). Making Campuses Safer for Students: the Clery Act as a Symbolic Legal Reform. *Stetson Law Review* XXXII: 61- 89.
[http://select.nytimes.com/2006/06/13/nyregion/13nyc.html?_r=1&oref=slogin](http://select.nytimes.com/2006/06/13/nyregion/13nyc.html?_r=1&oref=sloginhttp://select.nytimes.com/2006/06/13/nyregion/13nyc.html?_r=1&oref=slogin)

Gregory, D. E and Janosik, S. M. (2003). Effect of the Clery Act on campus judicial practices. *The Journal of College Student Development*, Nov/Dec 2003.

Government Accountability Office (GAO). (2005). *Report to Government Requesters: Various Factors May Limit the Impacts of Federal Laws That Provide for Denial of Selected Benefits*. Washington, D.C.: GAO (GAO-05-238)

Haberman, C. (2006, June 13). A fresh start needs hands willing to help. *The New York Times*. June 13. http://select.nytimes.com/2006/06/13/nyregion/13nyc.html?_r=1&oref=slogin

Harlow, C.,W. (2003). *Education and Correctional Populations*. Bureau of Justice Statistics Special Report. Washington, D.C.: U.S. Department of Justice.

Harrison, P. M. and Beck, A.J. (2005). *Prisoners in 2004*. Bureau of Justice Statistics. Washington, D.C.: U.S. Department of Justice.

Hart, T. C. (2003). *Violent Victimization of College Students*. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice.

Higher Education Center for Alcohol and Other Drug Prevention. (2001). Catalyst. 6 (3). Washington DC: US Department Health and Human Services.
<http://www.higheredcenter.org/pubs/factsheets/scope.html>

Holzer, H., Raphael, S. and Stoll, M. (2002). Will employers hire ex-offenders? Employer preferences, background checks and their determinants. In M. Pattillo, D. Weiman and B. Western (Eds.) *The Impact of Incarceration on Families and Communities*. New York: Russell Sage Foundation.

Jaschik, S. (2007). Innocent (applicant) until proven guilty. *Higher Education Review*. March 6. <http://www.insidehighered.com/news/2007/03/06/common>.

Joint Economic Committee, United States Congress.(2000, January). Investment in Education: Private and Public Returns. Washington, D.C.:

Justice Policy Institute. 2002. *Cellblocks or Classrooms? The Funding of Higher Education and Corrections and Its Impact on African American Men*. Washington, D.C.: Author.

Lake, P. F. (1999). *The Rise of Duty and the Fall of In Loco Parentis and Other Protective Tort Doctrines in Higher Education Law*, *Missouri Law Review* 64, 1.

Markowitz, M. W. and Brown-Jones, D. (2000). *The System in Black and White*. New York: Praeger.

Mendez, J., E. (2006). From Corrections to College: Initiative Paves Way to Higher Ed. *City Limits*. June 19. http://www.citylimits.org/content/articles/viewarticle.cfm?article_id=1930

National Center on Addiction and Substance Abuse at Columbia University. (1994). *Rethinking Rites of Passage: Substance Abuse on America's Campuses*. New York City. Author.

National Governor's Association. (2003). *Ready for Tomorrow: Helping All Students Achieve Secondary and Postsecondary Success, A Guide for Governors*. Washington D.C.: Author.

New York Attorney General. (1999). *New York City Police "Stop and Frisk" Practices: A Report to the People of New York From the Office of the Attorney General*. Albany, N.Y.: Author.

New York State Commission on Sentencing Reform. (2007). *The Future of Sentencing in New York: A Preliminary Proposal for Reform*. Albany, N.Y.: Author.
<http://criminaljustice.state.ny.us/legalservices/sentencingreform/2007prelimsentencingreformrpt.pdf>

Nuwer, H. (1990). *Broken Pledges: The Deadly Right of Hazing*. Atlanta: Longstreet Press.

Open Society Institute, Criminal Justice Initiative. (1997). *Education as Crime Prevention: Providing Education to Prisoners*. Research Brief, Occasional Series Paper 2.
http://www.prisonpolicy.org/scans/research_brief_2.pdf

O' Sullivan, C. (1991). Acquaintance *Gang Rape on Campus*. In Parrot A. and Bechhofer, L. (Eds. pp. 150-156). *Acquaintance Rape: the Hidden Crime*. New York: John Wiley and Sons.

Pager, D. (2007). The use of field experiments for studies of employment discrimination: Contributions, critiques, and directions for the future. *Annals of the American Academy of Political and Social Science* 609, 104- 133.

Pappano, Laura. (2007, April 22). Admissions: Conduct unbecoming. *The New York Times*. *Education Life* . <http://www.nytimes.com/2007/04/22/education/pappano.html>

Roman, C. G. and Travis, J. (2004). *Taking Stock: Housing, Homelessness, and Prisoner Reentry*. Washington, D.C.: The Urban Institute.

Sanday, P. R. (1992). *Fraternity Gang Rape: Sex, Brotherhood, and Privilege on Campus*. New York: N.Y.U .Press.

Security on Campus. (2000). *Campus Watch*. VI (1) Spring/Summer.
<http://www.securityoncampus.org/aboutsoc/campuswatch/v6i1.pdf>

Sentencing Project. (2003). *Annotated Bibliography: Race and the Criminal Justice System*. Washington, D.C.: Author.

Smith, M. (1988). *Coping with Crime on Campus*. Macmillan, New York, NY.

Stevens, D. J. and Ward, C. S. (1997). College education and recidivism: Educating criminals meritorious, *Journal of Correctional Education* 48, 106-111.

Sum, A., Khatiwads, I. McLaughlin, J. and Tobar, P. (2007). *The Educational Attainment of the Nation's Young Black Men and Their Recent Labor Market Experiences: What Can Be Done to Improve Their Future Labor Market and Educational Prospects?* Boston, Massachusetts: Center for Labor Market Studies, Northeastern University.

Tracy, C. and Johnson C. (1994). *Review of Various Outcome Studies Relating Prison Education to Reduced Recidivism*, Huntsville Texas: Windham School System.

Uggen, C. and Manza. J. (2002). Democratic contraction? The political consequences of felon disenfranchisement in the United States. *American Sociological Review* 67, 777-803.

University of North Carolina, Office of the President. (2004). *Task Force on the Safety of the Campus Community. Final Report*. http://counsel.cua.edu/Final_safety_task_force_report.pdf

U.S. Department of Education, Office of Adult and Vocational Education. (2003). *The Economic Imperative for Improving Education*. In *The High School Leadership Summit, Issue Papers*. Washington D.C.: Author

U.S. Department of Education. (2001). *2001 Report to Congress. The Incidence of Crime on the Campuses of U.S. Postsecondary Education Institutions*. Washington, D.C.: Author.

Vacca, J. (2004). Educated prisoners are less likely to return to prison. *Journal of Correctional Education*, 55, 297-305.

Wald, J. and Losen, C. 2003. *Deconstructing the School-to-Prison Pipeline: New Directions for Youth Development*. San Francisco: Jossey-Bass.

Wheelock, D. and Uggen, C. 2006. *Race, Poverty and Punishment: The Impact of Criminal Sanctions On Racial, Ethnic, and Socioeconomic Inequality*. NPC Working Paper #06-15. available at http://www.npc.umich.edu/publications/working_papers/?publication_id=79&