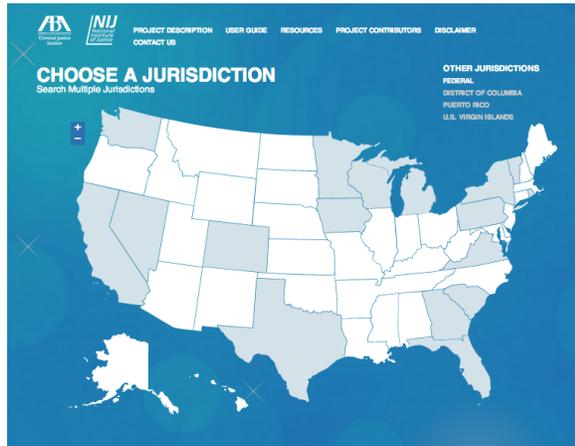


“The collateral consequences of a criminal conviction—legal sanctions and restrictions imposed upon people because of their criminal record—are hard to find and harder to understand.”
Homepage, National Inventory of the Collateral Consequences of Conviction



Communication of Collateral Consequences

A Strategic Outreach Plan for the
National Inventory of the
Collateral Consequences of Conviction



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Executive Summary

The National Inventory of the Collateral Consequences of Conviction (NICCC) is a comprehensive database identifying legal sanctions and restrictions imposed upon individuals because of their criminal record.¹ The research and website for the database was developed through collaboration of the American Bar Association Criminal Justice Section and the National Institute of Justice after a mandate established in the Court Security Improvement Act of 2007.² The site is scheduled for completion by April of 2014.³ While the Court Security Improvement Act of 2007 established that the database would be disseminated to state executives and legislatures, this does not guarantee that the content consolidated on this site will be readily accessible to the individuals in greatest need of this information, namely, criminally charged individuals, defense attorneys, or pro se litigants.⁴ National organizations and public leaders should robustly disseminate the database to increase accessibility and deterrent effects. Through encouraging outreach to state attorney generals, legal aid establishments, and nonprofit organizations, we aim to facilitate greater access to the NICCC for those in greatest need of the information hosted through this database.

Statement of Need

One out of every one hundred adults is incarcerated.⁵ That equals more than 2.2 million Americans.⁶ While the United States makes up only five-percent of the global population, nearly

¹ “National Inventory of the Collateral Consequences of Conviction” American Bar Association, accessed June 5, 2013 <http://www.abacollateralconsequences.org/CollateralConsequences/map.jsp>

² “National Inventory for Collateral Consequences: Project Description,” American Bar Association, accessed June 5, 2013 http://appealsandhabeas.com/NICCC/project_description.pdf

³ Ibid.

⁴ H.R. 110–177, 110th Cong. (2008) <http://www.gpo.gov/fdsys/pkg/PLAW-110publ177/pdf/PLAW-110publ177.pdf>

⁵ Adam Liptak, “1 in 100 U.S. Adults Behind Bars, New Study Says” *New York Times*, February 28, 2008, accessed March 19, 2013 <http://www.nytimes.com/2008/02/28/us/28cnd-prison.html>

⁶ Elixabeth Gudrais, “The Prison Problem: Sociologist Bruce Western rethinks incarceration in America,” *Harvard Magazine*, March-April 2013, 39.

a quarter of the worldwide prison population is harbored within our borders.⁷ Half this population is incarcerated for nonviolent offenses.⁸ The carceral system has expanded in recent decades in correlation to the rise in the War on Drugs, the implementation of mandatory minimum sentencing, and the prevalence of plea bargaining – a process that circumvents the Constitutional right to trial by jury. From 1975 to 2005, the United States prison population rose by 700%, a rate that far exceeded both population growth and crime rates, and a rate that would ultimately lead to a cost of more than 44 billion dollars annually.⁹

As populations facing the prosecutorial process expand, transparency within the punitive process is an increasing imperative. While the appeal of minimum possible time incarcerated increases the logic of accepting a plea deal, there is a distinct problem in the accessibility of information pertaining to consequences that may transcend the period of incarceration – including disenfranchisement and/or restricted access to public funding and resources. According to *The New York Times*, “Fewer than one in 40 felony cases now make it to trial, according to data from nine states that have published such records since the 1970s, when the ratio was about one in 12. The decline has been even steeper in federal district courts.”¹⁰ From 1986 to 2006 the ratio of pleas to trials nearly doubled, according to the Bureau of Justice Statistics.¹¹

With rising rates of plea-bargaining, it is crucial to audit the standards maintained by courts in communicating the full extent of penalties assumed when legally accepting the designation of felon. As Angela M. Beasley, Assistant Chief for the Major Crimes Unit of the Prince George’s County State’s Attorney’s Office recalled, “In 20 years [as a public defender], I

⁷ Ibid.

⁸ “[Infographic] Combating Mass Incarceration - The Facts,” ACLU, last modified June 17, 2011 <http://www.aclu.org/combating-mass-incarceration-facts-0>

⁹ Ibid.

¹⁰ Richard A. Opper Jr., “Sentencing Shift Gives New Leverage to Prosecutors” *New York Times*, September 26, 2011, accessed June 5, 2013 http://www.nytimes.com/2011/09/26/us/tough-sentences-help-prosecutors-push-for-plea-bargains.html?pagewanted=all&_r=0

¹¹ Ibid.

can't recall a judge ever telling a defendant that they would be losing their right to vote as a result of their guilty plea."¹² This anecdote speaks to a tangible void in the information typically afforded to persons facing plea deals. Concerted steps are necessary to ensure that individuals facing any sentences are fully aware of the scope of penalties for conviction – including collateral consequences. Accessible resources must be readily available to provide this information.

The NICCC serves as such a resource. Increased access and use of the NICCC database will provide citizens with a better understanding of what extended penalties follow incarceration and may work as a crime deterrent by enumerating the extensive collateral consequences that may arise with a conviction. Better dissemination of information on collateral consequences will make the American justice system more transparent and equitable.

History

In an attempt to address the gaps in knowledge regarding collateral consequences, Congress has provisioned the creation of the NICCC under the Court Security Act of 2007.¹³ The website serves as a consolidated database that will contain the collateral consequences to convictions within federal and state jurisdictions. The creation of the NICCC began in 2012.¹⁴ The American Bar Association's Criminal Justice Section won the contract to compile this database and is working to complete the database by April of 2014. Currently the federal collateral consequences and the collateral consequences of seventeen states have been compiled.¹⁵

¹² Angela M. Beasley, Assistant Chief for the Major Crimes Unit of the Prince George's County State's Attorney's Office. Interview with Matthew Maxwell. Personal Correspondence. April 24, 2013

¹³ "H.R. 110-177"

¹⁴ Ibid.

¹⁵ "National Inventory of the Collateral Consequences of Conviction"

The completion of the database will present a profound opportunity to promote the autonomy of defenders and defendants. A serious question that must now be raised is how to best utilize this database as it continues to be compiled and moving forward past completion. To answer this, we must focus on the implementation and dissemination of the website.

The Court Security Act of 2007 establishes that the consolidated report of collateral consequences shall be “distributed to the legislature and chief executive of each of the 50 States, each territory of the United States, and the District of Columbia.”¹⁶ This distribution requirement does not extend far enough to ensure that the information is accessible to those who need it most – defense attorneys and individuals facing or vulnerable to criminal charges.

Recommendation

While the creation of the NICCC is a necessary step in ensuring the transparency and accessibility of information affecting those facing trial in the United States, the dissemination process as mandated in the 2007 Court Security Improvement Act does not ensure that this information will be proactively filtered towards those in greatest need of accessing it. Robust and targeted outreach and communication tactics are necessary. We recommend the database be distributed through the following outlets:

1) State Attorneys General Websites:

As of June 2013, one year before the target completion of the database, none of the states with active information on the database had links or reference to the database posted on the website of the state’s attorney general.¹⁷ While the statutes, constitution, and laws of the State of Florida could be easily accessed through the website of the Attorney General Pam Bondi, the readability of these documents when searching for the collateral consequences of various

¹⁶ “H.R. 110–177”

¹⁷ “National Inventory of the Collateral Consequences of Conviction”

offenses within the state pales in comparison to the navigability of the NICCC.¹⁸ While no attorney's general websites currently host the database, there are clearly locations on each site where the NICCC could easily be promoted:

California: Services & Information (oag.ca.gov/programs)
Colorado: Resources (www.coloradoattorneygeneral.gov)
Florida: Legal Resources (www.myfloridalegal.com)
Georgia: Links (law.ga.gov/links)
Iowa: Resources (www.iowaattorneygeneral.gov)
Pennsylvania: Crime (www.attorneygeneral.gov/crime.aspx)
Massachusetts: Government Resources (www.mass.gov/ago/government-resources/)
Michigan: Related Links (www.michigan.gov/ag/0,4534,7-164-21239-52089--,00.html)
Minnesota: Resources (<http://www.ag.state.mn.us/>)
Nevada: Hot Topics (http://ag.nv.gov/Hot_Topics/Hot_Topics/)
New York: Resources (<http://www.ag.ny.gov/resource-center-0>)
South Carolina: Important Links (<http://www.scag.gov/important-links>)
Texas: Open Government (<https://www.oag.state.tx.us/open/index.shtml>)
Virginia: Programs and Resources
(www.oag.state.va.us/Programs%20and%20Resources/index.html)
Vermont: Criminal Law (<http://www.atg.state.vt.us/issues/criminal-law.php>)
Washington: Office Information
(www.atg.wa.gov/OfficeInformation.aspx#.UYaaJSvrkzQ)
Wisconsin: Topical Index (<http://www.doj.state.wi.us/topical-index-doj>)

Once the database is complete, we encourage that all attorney general's to host the database. The National Association of Attorneys General hosts a comprehensive list of attorney general contact information and websites (<http://www.naag.org/current-attorneys-general.php>). This site can serve as a starting point in distribution efforts. We also encourage federal organizations and leaders to host the database. The National Association of Attorneys General should host the database on their website, and The Department of Justice should host the database on multiple locations throughout their online infrastructure.

2) Defense Attorney Resources and Organizations:

As much of the responsibility for fully articulating the consequences of the acceptance of a plea deal or guilty verdict is placed upon the defense attorney in legal proceedings, the NICCC

¹⁸ "Legal Resources", Attorney General of Pam Bondi, accessed June 5, 2013 <http://www.myfloridalegal.com>

should be proactively disseminated by organizations that serve as resources to public defenders and defense attorneys.

We advise that the database be hosted on the website of the National Legal Aid & Defender Association and comparable regional organizations. As the hosts and developers of the database, the American Bar Association and The National Institute for Justice should be most vigilant in collaborating with affiliated organizations to widely disperse the NICCC website, and should similarly host the site under their own resources tabs. A comprehensive list of regional legal aid organizations has been compiled by the National Asian Pacific American Bar Association (<http://www.napaba.org/napaba/showpage.asp?code=legalaid>), and can serve as a starting point in distribution efforts. The listed organizations with web platforms should be encouraged to host the database, and we encourage the ABA and NIJ to send memos to all organizations with listed mailing addresses to announce the launch of the database.

3) Non-Profit and Religious Organizations Serving Vulnerable Populations:

We advise that the database be disseminated to non-profit organizations that work closely with populations that may be impacted by incarceration. These populations include individuals that have been incarcerated, families of individuals that have been incarcerated, and individuals that may be at risk for incarceration. By working directly within these communities, nonprofit organizations serve as a direct point of contact to provide individuals they serve with comprehensive information on collateral consequences. Examples of non-profit organizations that may benefit from information regarding the implementation of the NICCC have been listed in the appendix at the end of this report. Among the organizations listed are non-profits focusing on prison policy reform, prison population outreach, and families of prisoners, as well as clergy networks, halfway houses, and shelters that serve homeless individuals.

Implementation

Concerted steps must be taken to ensure that the NICCC is not lost in the vacuum of the Internet, and instead readily accessible on multiple online platforms. The ABA and NIJ should pioneer the dissemination of the NICCC. They should lead by example by making the database explicitly accessible through their own websites, and should release a memo to state Attorneys General and legal defense and non-profit organizations to encourage them to host this resource on their websites and proactively share it with their constituencies. The detailed recommendations above should serve as a blueprint for this endeavor.

Additionally, the accessibility of this information through these multiple web platforms would be increased through collaboration with search engines such as Google or Yahoo! to expand the keyword search results that produce the site. Since the term “collateral consequences” is not inherently known by the general public, tagging the database and sites hosting it with more colloquial terms to describe the consequences of conviction will increase the accessibility of this valuable resource. We encourage the ABA and NIJ to champion this effort and collaboration.

Conclusion

While hyperlinking the NICCC through publicly accessible web domains will increase the reach of this resource, the responsibility still falls in large part on attorney, judges, and other legal actors to see that this information is reaching those who are most personally affected by collateral consequences. A status quo must be set where collateral consequences are fully articulated by attorneys, judges, and advocates before persons facing conviction accept plea deals. Greater transparency and full disclosure of the collateral consequences of conviction should be a status quo. This is information that every American should have the right to know and the resources to access. Though the creation of the NICCC is a step in the right direction, it

will only be through robust dissemination of this resource and proactive action by multiple actors within our legal system that tangible improvement will be made.

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Appendix

Clergy Networks

Comprehensive Listing

<http://www.cpx.cts.edu/newmedia/resources/clergy-networks> (Christian)

Halfway Houses

Comprehensive Directory

http://reducemyprisonsentence.com/?page_id=2

Homeless Shelters

Comprehensive Directory

<http://www.homelesshelterdirectory.org/>

Prison Reform Organizations

Citizens United for Rehabilitation of Errants

<http://www.curenational.org/index.php>

Families Against Mandatory Minimums

<http://www.famm.org/>

Colorado Criminal Justice Reform Coalition

<http://www.ccjrc.org/index.shtml>

A Better Way Foundation Connecticut

<http://www.abwfct.org/about/>

Prison Outreach Organizations

Harvard University Prison Studies Project

<http://prisonstudiesproject.org/>

Southern Center for Human Rights

<http://www.schr.org/>

Boston University Prison Education Program

<http://www.bu.edu/pep/programs/>

Prison University Project

<http://www.prisonuniversityproject.org/>

Cornell Prison Education Program

http://cpep.cornell.edu/_ABOUT_US

Prison Smart

<http://www.prisonsmart.org/>

Post-Prison Education Program

<http://postprisonedu.org/pages/123/our-work/>

National Center on Institutions and Alternatives

<http://www.ncianet.org/about/>

The Fortune Society

<http://fortunesociety.org/>

Insight Prison Project

<http://www.insightprisonproject.org/>

Families of Prisoners Organizations

Ellen Baker Center for Humans Rights

Books Not Bars

<http://mobile.ellabakercenter.org/booksnotbars>

Link of Love

<http://www.linkoflove.org/>

Assisting Families of Inmates

<http://www.afoi.org/>

Friends Outside

<http://www.friendsoutside.org/>