

## CHAPTER 6

# ELIMINATING THE USE OF CRIMINAL JUSTICE INFORMATION

In the United States, more than 70 million Americans have been involved in the justice system in some capacity.<sup>1</sup> The “tough-on-crime” policies of the 1980s and 1990s disproportionately impacted communities of color, especially Black and Latinx communities. Adult Black men are 5.7 times as likely and Latinx men are 2.5 times as likely to be incarcerated as their White counterparts.<sup>2</sup> Women are less likely than men to face incarceration, but here again, Black women are 1.7 times more likely and Latinx women are 1.3 times more likely than White women to experience incarceration.<sup>3</sup> When examining certain types of crimes, the disparities are even more startling. For example, while Black and White people sell and use drugs at the same rate, Black people are 6.5 times more likely to be incarcerated for drug-related crimes than White people.<sup>4</sup>

A photograph of a classroom scene, overlaid with a teal tint. A male teacher with glasses stands on the left, gesturing towards a group of male students seated at long tables. The students are looking towards the teacher. One student in the foreground has a laptop open on his table. The background features a chalkboard and large windows.

**"For the first time in my life, I am hopeful that I will be able to enter the professional workforce as a valuable and educated employee. [My education] has expanded my perspectives in many ways, and it has truly changed my life for the better."**

—Letter from higher education student to the Department of Education regarding his experience earning a degree while incarcerated in a state prison facility (copy on file with authors).

The racism evident in our policing and justice systems reverberates to all corners of our society, limiting the opportunities available to people of color. Higher education is not immune. In fact, when colleges and universities collect criminal justice information (CJI) and use it to help make admissions decisions, they not only fail to combat the racist policies and practices in our justice system, they reinforce and perpetuate them.

Racial disparities in incarceration and criminal justice involvement begin as early as elementary school, with the school-to-prison pipeline primarily affecting Black and Latinx students. Due to zero-tolerance policies, many schools refer students to the justice system for punishment, becoming “conduits for the juvenile justice system.”<sup>5</sup> Black youth are five times more likely to be held in juvenile facilities than White youth,<sup>6</sup> meaning that Black students are more likely to develop criminal records well before the time they apply to college. The school-to-prison pipeline affects Black boys and Black girls, who are both disproportionately and unfairly disciplined by the U.S. education system.<sup>7</sup> Not only are Black college applicants more likely to have a criminal record to disclose, but those who do disclose a criminal history are at particularly high risk for being denied admission due to their criminal justice involvement when compared with their White and Asian peers.<sup>8</sup>

Using criminal histories in college admissions means either that students must self-disclose any past interaction with the justice system or that the institution uses background checks to reveal any involvement with the justice system, even if records are sealed or expunged.

### Racial bias in the justice system means that CJI policies reinforce racial inequities in higher education, serving as a *de facto* race-based system of discrimination in three key ways:

- » **Applicant attrition:** Asking applicants to disclose CJI can deter students of color from applying to college
- » **Admission denial:** Using CJI to make admissions decisions limits postsecondary opportunities for students of color—particularly Black students—but is not proven to improve campus safety
- » **Ongoing restrictions:** CJI policies that subject students to ongoing restrictions and surveillance can negatively impact their college success

The systemic exclusion of people with criminal histories from applying or being accepted into higher education institutions also negatively affects efforts to reduce recidivism rates. Research has demonstrated that education can provide an alternative pathway for people who have been previously involved with the justice system.<sup>9</sup> Postsecondary education programs in prisons have been shown to reduce recidivism rates by as much as 40 percent.<sup>10</sup> Post-release higher education opportunities, while less studied, likely have a similar positive impact.

However, formerly incarcerated people have lower rates of postsecondary attainment than the general population. Only 4 percent of incarcerated people and 18 percent of people on probation have attained a bachelor’s degree, compared with 34 percent of the general population.<sup>11</sup> By including criminal history screenings in admissions processes, institutions limit opportunities for large swaths of the population, especially Black and Latinx individuals, and stymie the great potential of education to reduce the overall prison population and build a more equitable future.

## ASKING APPLICANTS TO DISCLOSE CJI CAN DETER STUDENTS FROM APPLYING TO COLLEGE

There are two primary ways that colleges and universities collect CJI in the admissions process: self-reporting and criminal background screening. Most institutions ask applicants to self-report CJI, which is usually collected via responses to questions included in the admissions application. Background checks can be conducted in a variety of ways, including via public databases or contracts with private companies.<sup>12</sup>

Simply asking for criminal history on a college application can have a psychological and emotional impact and can deter someone from submitting it.<sup>13</sup> This attrition effectively limits postsecondary access for students impacted by the justice system, who may endure trauma, the emotional burden of having to relive past incarceration, and the many collateral consequences of criminal justice involvement.<sup>14</sup> But unless they complete their application, students impacted by the justice system may never have the opportunity to begin their postsecondary journey.

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### Ban the Box

The Ban the Box movement is addressing discrimination by calling for an end to the practice of employers asking potential employees to detail history with the justice system on job applications. A movement within higher education mirrors this one and seeks to end the use of CJI in college admissions while encouraging an examination of CJI policies, why they are implemented, and their equity implications.<sup>15</sup>

A growing number in higher education are questioning the usefulness of incorporating CJI in the admissions process. For example, the Common Application incorporated questions related to criminal history in 2006, thus automatically making this information available to all institutions using that system. Fifteen years later, in 2019, due to advocacy led by people who were formerly incarcerated and based on legislation that “banned the box” from employment and housing applications, the Common Application removed these questions from their main application.<sup>16</sup> Individual institutions are still able to include questions about criminal history in their supplemental application sections.<sup>17</sup>

Since these prospective students do not complete their applications and are rarely asked why, it is difficult to quantify how many students are deterred from applying due to the collection of CJI.<sup>18</sup> However, qualitative reports and interviews make clear that questions about CJI can have a chilling effect on this process. For example, the Center for Community Alternatives (CCA) analyzed application data from nearly half of the institutions in the State University of New York (SUNY) system and found that the applicant attrition rate is almost three times higher for those who disclose a criminal record than for the general population.<sup>19</sup> Despite this fact, nearly 72 percent of institutions require applicants to disclose their criminal history, with more selective institutions being the most likely to include questions about criminal history in the application process.<sup>20</sup>

CCA has examined the use of CJI in admissions decisions (see Center for Community Alternatives and the Study of CJI) and found that, among the institutions surveyed, private four-year universities were much more likely to consider criminal history in their admissions processes than public universities or two-year institutions.<sup>21</sup> In contrast, open enrollment institutions are more likely to provide opportunities for individuals involved in the justice system to start or restart their education. However, for students with criminal justice involvement who start at two-year institutions and ultimately hope

to earn a bachelor's degree, transferring into a four-year institution may be challenging. Institutions with articulation agreements should examine the role of CJJ in participating institutions' admissions processes and ensure that students understand the opportunities available to them (see [Chapter 7](#) for more on transfer pathways).

## CENTER FOR COMMUNITY ALTERNATIVES (CCA) AND THE STUDY OF CJJ

In 2010, CCA released its landmark study of the use of CJJ in admissions decisions entitled *The Use of Criminal History Records in College Admissions Reconsidered*.<sup>22</sup> This study used the American Association of Collegiate Registrars and Admissions Officers' (AACRAO) professional network and membership; 273 colleges and universities responded to questions regarding their admissions offices' usage of CJJ in admissions, housing, and student life decisions. In 2015, CCA updated the results with all 60 SUNY institutions, providing more detail on their policies and practices, including 30 of those providing information on their use of CJJ.<sup>23</sup> In both studies, CCA analyzed policy documents, surveyed admissions offices and administrators, and interviewed administrators and formerly incarcerated students in order to understand the experiences of individuals involved in the justice system and their postsecondary educational journeys. Combined, these studies provide a comprehensive view of institutional use of CJJ in admissions decisions. Many of the findings presented in this chapter are based on CCA's institutional survey or later studies building from CCA's work.



A student peers through a microscope in his Botany course at the Moreau College Initiative, which offers higher education to students while incarcerated. CREDIT: PETER RINGENBERG

## USING CJJ TO MAKE ADMISSIONS DECISIONS LIMITS POSTSECONDARY OPPORTUNITIES FOR STUDENTS OF COLOR BUT IS NOT PROVEN TO IMPROVE CAMPUS SAFETY

Many institutions that collect CJJ cite campus safety as the primary reason for doing so.<sup>24</sup> There is an overwhelming but unsupported belief that individuals who have been involved in the justice system will negatively impact campus safety and are more likely to commit crimes against their peers or institution. Public reporting of campus safety statistics and incidents of crime required by the Clery Act may also fuel concerns about admissions decisions. As higher education stakeholders are made more aware of the crimes happening on college campuses, it may be easy to make assumptions that those who have a history with the justice system are involved.

However, research to date does not support this assumption. While further study is needed, research has not found a link between considering CJJ in admissions decisions and rates of campus crime.<sup>25</sup> Furthermore, such conjecture discounts—and contradicts—the transformative nature of higher education most colleges and universities claim to provide. **By collecting CJJ and using it in admissions decisions, these institutions perpetuate the stigma and collateral consequences of past incarceration.**

Only a small share (16 percent) of institutions surveyed by CCA collect but do not use CJI in admissions decisions.<sup>26</sup> For the greater share of institutions that do collect and use CJI, disclosure of a criminal record is more likely to trigger additional screening than an automatic denial of admission.<sup>27</sup> **Different CJI can impact admissions decisions differently, and the methods for evaluating the information matter a great deal, as shown by CCA's results:**

» **CJI factors considered in admissions decisions:**

Institutions report using a wide array of convictions as negative factors in admissions decisions. Violent or sex offense convictions are most likely to result in automatic denials, although 90 percent of institutions that used CJI in admissions decisions consider any felony conviction negatively.<sup>28</sup> Three-quarters of institutions consider drug and alcohol convictions, approximately half consider any youthful offender adjudication, and one-third consider pending misdemeanors or misdemeanor arrests.<sup>29</sup> About one-third (32 percent) of schools also reported that a failure to disclose a criminal record would result in automatic denial of admission, as it would be considered a deliberate act of falsification.<sup>30</sup> Some institutions consider more than the conviction itself, and also report automatically denying admission if an applicant had not yet completed his or her term of community supervision.<sup>31</sup>

» **Procedures for evaluating criminal justice information:**

Most institutions that collect CJI implement additional screening procedures for applicants with criminal records, often by convening a group of people who are not involved in the standard admissions process, such as academic deans (53 percent), campus security (40 percent), legal counsel (26 percent), counseling or mental health staff (20 percent), or risk assessment personnel (12 percent).<sup>32</sup>

Implicit or explicit biases among any of these individuals can negatively impact applicants' chances of admission. Yet less than half of the institutions that responded to CCA's survey and that collected and used CJI in their admissions processes had written policies to guide admissions officers and others who were involved in the decision-making process.<sup>33</sup> Only 40 percent of schools that reported collecting CJI trained staff on how to interpret criminal records.<sup>34</sup> Without proper training and explicit

knowledge and regard to the inherent biases of the justice system, these screening panels can exacerbate the harm caused by using CJI in the admissions process.

About two-thirds of institutions that use CJI in admissions allow for an appeals process, but not all institutions share appeal-related information with applicants denied due to their criminal record. While approximately half of institutions provide this information to all such applicants, 28 percent reported that they do not share any information about applicants' option to appeal.<sup>35</sup> Failing to provide appeal information serves as yet another barrier to college access for students impacted by the justice system.

Some universities only collect CJI from a subset of applicants, focusing on programs that prepare students for jobs that exclude people with criminal histories. For example, institutions may require students to disclose their CJI when applying to health-related, education, or criminal justice programs because of licensing or other requirements for employment in these fields.<sup>36</sup> Indeed, colleges and universities have a responsibility to prepare students for employment and career advancement, and CJI may be important for providing students with appropriate and targeted career services. However, this information can be collected after the point of admission, for use solely in advising students about selecting a program of study and navigating licensure processes. Also, career services and/or institutional leadership can leverage their connections with industry leaders to design equitable employment policies that provides more opportunities for justice-impacted students.

## CJI POLICIES THAT SUBJECT STUDENTS TO ONGOING RESTRICTIONS AND SURVEILLANCE CAN NEGATIVELY IMPACT THEIR COLLEGE SUCCESS

Even if students with a criminal record make it through the admissions and appeal process, they still face many hurdles in persisting through college. In fact, formerly incarcerated students are eight times less likely to complete college than those who have not been involved in the justice system.<sup>37</sup> Institutional policies and procedures can either raise or lower these hurdles, yet too often they are stigmatizing and have a negative impact on student success.

For instance, more than half of CCA's responding institutions reported that they distinguish or require some level of supervision for students with criminal records who are admitted.<sup>38</sup> These procedures range from imposing specific class registration restrictions, entering students' names into special databases, restricting housing options, providing court documentation of their criminal history and judgments, paying for criminal background checks, assigning additional surveillance by campus security, or restricting students to exclusively online classes.<sup>39</sup> Nearly one-third (32 percent) of these institutions restricted access to student services (like student housing and Greek life) for students with a criminal record, and 6 percent included an annotation on the student's transcript.<sup>40</sup> While some students have created supportive networks for formerly incarcerated individuals, these are typically developed without guidance or support from the administration.<sup>41</sup>

In sum, it is clear that criminal screening of college applicants is common, and yet research has not found evidence that CJI admissions policies have served their intended purpose: making campuses safer. Such policies do, however, dissuade potential students from applying, yield denials of admission, and limit postsecondary opportunities for students of color, particularly Black and Latinx students, because of racial disparities in criminal justice involvement.

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The graduating class of 2019 from the Moreau College Initiative in Westville, Indiana celebrates earning their degrees while at the Westville Correctional Facility. CREDIT: PETER RINGENBERG



CREDIT: REBECCA SANABRIA

## OPENING THE DOOR TO OPPORTUNITY: ELIMINATE USE OF CRIMINAL JUSTICE INFORMATION

Our nation's correctional facilities disproportionately incarcerate people of color, people from low-income backgrounds, and people without college degrees. In other words, the justice system imprisons individuals from the same populations that have been historically excluded from our nation's postsecondary institutions. Higher education holds the unique potential to fundamentally transform society and help neutralize key facets of injustice.

### **TO REALIZE THIS POTENTIAL AND REMEDY THESE INEQUITIES, INSTITUTIONAL LEADERS SHOULD:**

#### **NO LONGER CONSIDER CJI OR CRIMINAL HISTORIES WHEN MAKING ADMISSIONS DECISIONS:**

Using CJI in the admissions process discriminates against Black people and other people of color, as they are more likely to have been involved with the justice system due to racist and oppressive policing and sentencing practices. These policies close doors for already marginalized students, in addition to missing the opportunity for potential recidivism reduction and personal growth for justice-involved individuals.

#### **PROVIDE RESOURCES AND SUPPORT TO STUDENTS WITH CRIMINAL HISTORIES TO NAVIGATE PROGRAM SELECTION AND TRANSITIONS INTO CAREERS:**

While college admissions offices may not have control over employment laws and regulations around licensing, they can support students in applying for and declaring majors that will provide educational enrichment, social mobility, and employment opportunities post-graduation. If institutions are collecting CJI, they also should be providing guidance and support for students to select majors. Should institutions no longer require CJI as part of the admissions process, they can partner with career services to make this advising available to all students.

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**IF INSTITUTIONAL LEADERS  
CONTINUE TO USE CJI,  
THEY SHOULD:**

**EXAMINE THE INTENT AND EFFICACY OF COLLECTING  
THIS INFORMATION:**

Institutions should carefully consider why and how they are currently using CJI and use their own data to better understand the impact these policies have on campus diversity.

**PROVIDE OPEN-ENDED SPACES FOR CONTEXT:**

Applications should provide enough open-ended space for the prospective student to provide the full context of their CJI that only they understand. Further, applicants should never be required to pay for a background check. To give these students the chance to be considered for admission, institutions must reevaluate how to best collect CJI in a holistic way to provide students with the dignity and agency to best share their own stories.

**INVOLVE DIVERSE DECISION MAKERS:**

If CJI is to be reviewed through a secondary panel review process, institutions should convene a diverse group of practitioners, including diversity and inclusion officers, individuals with counseling or social work backgrounds, and administrators who have developed a deep and nuanced understanding of the justice system, including how parole impacts students. There should be training on the history of and persistent inequities in the mass incarceration system so decision makers are equipped with the necessary nuance to review these applications.

**RESPECT STUDENTS' PRIVACY:**

Students should have full control of their own story, so while admitting students with criminal histories may make for interesting or uplifting news, admissions offices should never publicly disclose this information without explicit informed consent.

**ISSUE STANDARD TRANSCRIPTS:**

Institutions should not mention criminal history on transcripts, as it may impact future housing, employment, insurance, income, and other professional development opportunities.

# CHAPTER 6 ENDNOTES

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