

# Top Ten Federal Collateral Consequences Facing Returning Citizens



Each year, more than 600,000 formerly incarcerated individuals return to our communities, where they face over 44,000 state and federal collateral consequences impacting their access to civil rights, employment, public assistance, and occupational licenses.<sup>1</sup> While certain sanctions may be appropriate when directly connected to the nature of past convictions and a clear rationale in public safety, this does not describe the prevailing majority of these agency rules and statutory laws. The National Inventory of Collateral Consequences of Conviction identifies 1,049 collateral consequences established through federal law and policies.<sup>2</sup> Prison Fellowship highlights several below that merit reevaluation by federal lawmakers and the executive branch.

- 1. Veterans' Benefits:** Veterans with a felony conviction are prohibited from accessing Armed Forces Retirement Home.<sup>3</sup>
- 2. Military Service:** Individuals convicted of a felony may not enlist in any armed force. Relevant Secretary "may authorize exceptions."<sup>4</sup>
- 3. Farming:** Individuals convicted of the "possession or trafficking of a controlled substance" are ineligible for any or all United States Department of Agriculture "grants, contracts, loans or payments" based on the discretion of a federal court.<sup>5</sup>
- 4. Federal Jury:** Individuals convicted of a crime by a state or federal court who received a sentence for more than one year and have not received the "restoration of civil rights" are prohibited from service on a federal jury.<sup>6</sup> Present legal interpretation suggests this exclusion is not waived even if an individual with state convictions obtains the automatic restoration of civil rights after completion of sentence. An affirmative act, including but not limited to pardon, must take place.<sup>7</sup>
- 5. Higher Education Financing:** Students with drug felony convictions are excluded from access to the American Opportunity Tax Credit.<sup>8</sup>

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<sup>1</sup> Jennifer Bronson & E. Ann Carson, *Prisoners in 2017*, Bureau of Justice Statistics (April 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>; Justice Center, *National Inventory of Collateral Consequences of Conviction*, Council of State Government Justice Center (2019), <https://niccc.csgjusticecenter.org/>.

<sup>2</sup> *Id.*

<sup>3</sup> 24 U.S.C. § 412 (2018).

<sup>4</sup> 10 U.S.C. § 504 (2011).

<sup>5</sup> 7 CFR § 718.6 (2019).

<sup>6</sup> 28 U.S.C. § 1865 (2012).

<sup>7</sup> Department of Justice, *Federal Statutes Imposing Collateral Consequences Upon Conviction*, U.S. Department of Justice (November 2006), [https://www.justice.gov/sites/default/files/pardon/legacy/2006/11/13/collateral\\_consequences.pdf](https://www.justice.gov/sites/default/files/pardon/legacy/2006/11/13/collateral_consequences.pdf).

<sup>8</sup> Margot L. Crandall-Hollick, *The American Opportunity Tax Credit: Overview, Analysis, and Options*, Congressional Research Service (June 2018), <https://fas.org/sgp/crs/misc/R42561.pdf>.

6. **Federal Financial Aid:** A student convicted of drug felony charges while enrolled in a higher education program using federal financial aid can receive a lifetime ban on further access to federal higher educational loans or grants. The sanction applies differently for possession or distribution offenses.<sup>9</sup>
7. **Labor Unions:** Prohibits leadership roles in organized labor organizations for individuals convicted of a variety of offenses for thirteen years following conviction or end of prison sentence (whichever is later).<sup>10</sup>
8. **Employment in Banking:** Prohibits employment, ownership, or participation in the banking industry by individuals convicted of “any criminal offense involving dishonesty or a breach of trust or money laundering” without a waiver obtained by FDIC. No waivers allowed for individuals with certain convictions unless mandatory ten year probation period after point of conviction is complete.<sup>11</sup>
9. **Food assistance:** Individuals convicted of a drug felony are prohibited from accessing Supplemental Nutrition Assistance Program benefits. States retain discretion to opt out of—or modify—this ban through legislative action.<sup>12</sup> This collateral consequence does not advance public safety; research has found that access to social insurance programs for returning citizens reduces recidivism.<sup>13</sup>
10. **Social insurance:** Individuals convicted of a drug felony are prohibited from accessing Temporary Assistance for Needy Families benefits. States retain discretion to opt out of—or modify—this ban through legislative action.<sup>14</sup> This collateral consequence undermines public safety.<sup>15</sup>

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<sup>9</sup> 20 U.S.C. § 1091 (2019).

<sup>10</sup> 29 U.S.C. § 504 (2014).

<sup>11</sup> 12 U.S.C. § 1829 (2012).

<sup>12</sup> Maggie McCarty, et al., *Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance*, Congressional Research Service (November 2016), <https://fas.org/sgp/crs/misc/R42394.pdf>.

<sup>13</sup> Crystal Yang, *Does Public Assistance Reduce Recidivism*, *American Economic Review and Proceedings* (2017), [http://www.law.harvard.edu/programs/olin\\_center/papers/pdf/Yang\\_920.pdf](http://www.law.harvard.edu/programs/olin_center/papers/pdf/Yang_920.pdf).

<sup>14</sup> McCarty, *supra* note 12.

<sup>15</sup> Yang, *supra* note 13.