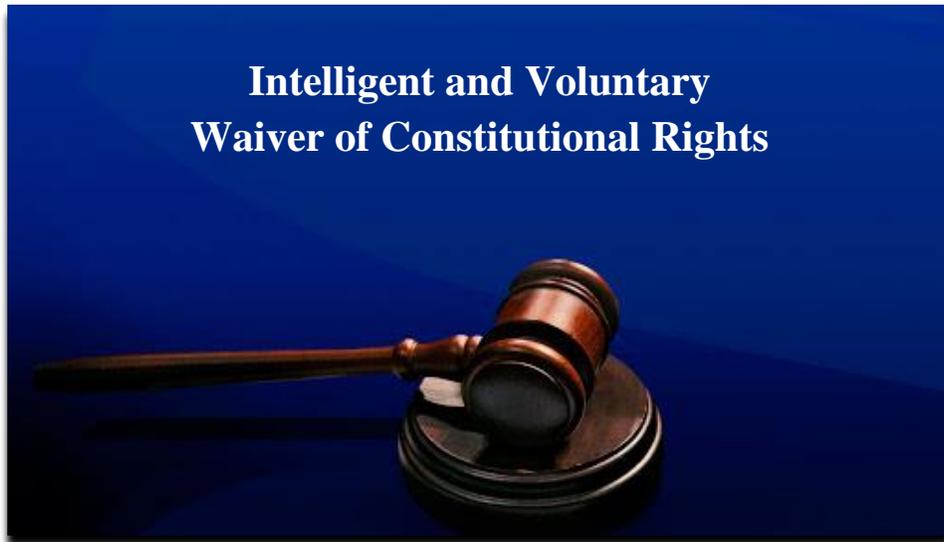


**COLLATERAL CONSEQUENCES OF  
PLEADING GUILTY IN LOUISIANA**  
THE DIRECT AND INVISIBLE SYSTEMATIC SANCTIONS  
ASSOCIATED WITH A CONVICTION HISTORY

**Intelligent and Voluntary  
Waiver of Constitutional Rights**



**Voice of the Experienced**

New Orleans | Baton Rouge | Lafayette | Shreveport  
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A REPORT FOR THE LOUISIANA LEGISLATURE  
FEBRUARY 2020

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## EXECUTIVE SUMMARY

In 2019, Voice of the Experienced (VOTE) advocated for a change in the law that would require defendants to be made aware of the full panoply of rights being waived upon pleading guilty in Louisiana criminal courts. In 1969, the U.S. Supreme Court ruled that waiving one's rights is only valid where it is done "intelligently" and "voluntarily," and yet this determination is left to the discretion of the presiding judge, which has led to broad discrepancies in what this process actually looks like.<sup>1</sup> This report was requested by the Louisiana State Legislature to clarify the process by which people waive their constitutional rights during a guilty plea, and address potential variation between court systems.

In conducting research for this report, VOTE found that few rights are mentioned in the process of the waiver, and there is no uniform procedure by which to waive rights in Louisiana's courts. More concerning, VOTE found other direct infringements of constitutional rights which are *never* mentioned by the courts, but which are also fundamental and severe. No Louisianan should be misled into forfeiting constitutionally guaranteed rights.

Instead, the State of Louisiana should implement a uniform and standard waiver process by which all defendants entering into a plea deal are informed of the collateral consequences of their plea, constitutionally and otherwise. The report makes the following recommendations:

- 1. ENACT A STATEWIDE *BOYKIN* STANDARD:** The information shared with a defendant in a *Boykin* procedure must, at the very least, advise people of the mandatory infringements upon their constitutional rights. The procedure should also add all reasonable infringements upon their constitutional rights. These rights include being subjected to legalized discrimination. The standard should be comprehensive and uniform to ensure equity and fairness in each and every courtroom.
- 2. CREATE STATE DATABASE OF COLLATERAL CONSEQUENCES:** There are several clearinghouse databases of collateral consequences currently available to the general public. The National Inventory of Collateral Consequences has provided a mechanism to find and track specific collateral consequences of a conviction by state and offense. However, the database is difficult to use, even for experienced practitioners. The CIVICC model, deployed by Ohio, provides a much simpler tool for judges, attorneys, and people to assess the collateral impact of a particular sentence in real time. Judges should ensure a person has had access to the database before waiving their rights.

<sup>1</sup> *Boykin v. Alabama*, 395 U.S. 238, 241 (1969).

- 3. CONSIDERATION OF COLLATERAL CONSEQUENCES IN SENTENCING:** Judges, prosecutors, and defense attorneys should consider collateral consequences in plea negotiations and weigh the full punitive nature of the guilty plea, and not merely “jail or no jail.” This should be included in a uniform Boykin form.
- 4. LEGISLATIVE ACTION TO REDUCE UNNECESSARY COLLATERAL CONSEQUENCES:** Louisiana has 1,339 laws and statutes that impose post-conviction barriers to basic life necessities. No conviction should be a life sentence. No conviction should keep a mother from feeding her children or a child from obtaining higher education. Punishment should not be perpetual, and redemption should be reachable. The Louisiana State Legislature should work to reduce legislative barriers to occupational licensing, while expanding access to record sealing, fair hiring, and fair housing. Any infringement on constitutionally protected rights should be eradicated.
- 5. PLACING A SHARED BURDEN FOR COURTROOM PRACTITIONERS:** It is unreasonable to require prosecutors or courts to be held responsible for advising defendants regarding all impacts of a conviction, particularly where important information may require sharing privileged details. However, it is not enough to simply place all the duty upon defense counsel. Similar to Boykin, the defense attorneys are best positioned to discuss relevant details regarding the decision to waive a jury trial, for example, while the judge is positioned to ensure the defendant had such a conversation and is satisfied with the results.

## INTRODUCTION

In 1969, the United States Supreme Court ruled in *Boykin v. Alabama*, a precedent that now controls the waiver of rights involved with a guilty plea in every court.<sup>2</sup> The Court held that a waiver is:

“[T]he privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by the Fourteenth..., the right to trial by jury..., and the right to confront one's accusers -- all of which are involved when a guilty plea is entered in a state criminal trial -- cannot be presumed from a silent record.”<sup>3</sup>

This ruling created what is known as the “Boykin process,” or “Boykinization,” typically through a “Boykin form” and/or oral statements on the record indicating that the guilty plea, and the connected waiver of constitutional rights are “intelligent” and “voluntary.”<sup>4</sup>

In theory, *Boykin* provided a standard measure for the courts to assess whether an individual had been fully informed of the nature of their plea. Yet, in fifty years of practice since, courts across Louisiana have interpreted the law in myriad ways, leading to discrepancies in the detail and comprehensiveness in how the *Boykin* proceeding is conducted. In some courts, judges collect a signed *Boykin* form for the record, and conduct a hearing that is at once lengthy and thorough; in others it is cursory, with the defendant not speaking at all except to acknowledge the signing of the form.

In reality, it is a rare occasion when people take plea bargains understanding how post-conviction penalties, often called collateral consequences, will infringe on constitutional rights and restrict access to their most basic necessities.<sup>5</sup> It is not simply defendants that are unaware of the collateral implications of a plea; overwhelmingly, stakeholders across the criminal legal system acknowledge a rudimentary understanding of how laws and statutes that follow a conviction amount to permanent punishment.

In response to this reality, the Louisiana Legislature enacted Act 158 in 2019 which states that the, “the court shall further inquire of the defendant and his attorney whether the defendant has been informed of all pleas offers made by the state.” This provides precedent for further instructions on the Boykin. The state Legislature also passed

<sup>2</sup> *Boykin v. Alabama*, 395 U.S. 238 (1969).

<sup>3</sup> *Id.* at 242.

<sup>4</sup> *Id.* at 242.

<sup>5</sup> Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U. L. Rev. 623, 635 (2006).

2019 House Concurrent Resolution 109, calling on Voice of the Experienced (VOTE) to investigate how, if at all, collateral consequences factor into the consideration of the terms, parameters, and sentencing in a plea agreement.<sup>6</sup> This report is informed by national studies, state data, and testimony collected through interviews with stakeholders in the criminal legal system, community members, public defenders, and other systems providers. Finally, the report assesses best practices, and recommends a uniform standard to which all Louisiana courts and stakeholders should abide.

<sup>6</sup> H.R. Con. Res. 109., 2019 Reg. Sess. (La. 2019).

## COLLATERAL CONSEQUENCES IN LOUISIANA

Over 100 million people in the United States have a conviction record – that is, nearly half of all working age adults. Despite the maxim of “debt paid to society,” collateral consequences ensure that for many people punishment is perpetual. The National Inventory for Collateral Consequences estimates that there are approximately 44,605 laws and statutes that erect barriers to safe housing, meaningful jobs, and constitutionally protected rights for people with conviction records.<sup>7</sup> In addition to the second highest rate of incarceration, Louisiana also carries some of the most onerous and restrictive collateral consequences in the nation. At least 1,339 state laws and statutes impose sanctions on basic life necessities for almost anyone with a record.<sup>8</sup> While this report focuses on felony convictions, it is critical to note that collateral consequences are often imposed even for arrests with no conviction.

The result is what legal advocates have called “civic death,” a term used to describe the mechanisms by which people with convictions are legally stripped of basic civil rights and access.<sup>9</sup> These penalties range from the loss of constitutional rights – the right to vote, the right to serve on a jury, the right to bear arms – to exclusion from safe housing, meaningful employment opportunities, access to public benefits, and even education.<sup>10</sup> These sanctions are both directly and systematically designed to perpetuate punishment long after the conviction sentence has expired.<sup>11</sup> And while absent at sentencing, these post-conviction penalties restrict and diminish the lives and redemptive potential of people with a record.<sup>12</sup>

Throughout every intercept of the criminal legal system – from policing to charging and pretrial detention to sentencing and finally to collateral consequences – structural inequalities are embedded. Mass criminalization and the penalties that follow are experienced disproportionately by Black and brown communities as well as communities with low income.<sup>13</sup> This is particularly true in Louisiana.

<sup>7</sup> Council of State Governments, “The National Inventory of Collateral Consequences of Conviction,” <https://niccc.csgjusticecenter.org> (last accessed Jan. 28, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. Pa. L. Rev. 1789, 1810 (2012).

<sup>10</sup> U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on the Communities*, at 22-28, June 2013, <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>.

<sup>11</sup> Pinard, *supra* note 12, at 635.

<sup>12</sup> *Id.*

<sup>13</sup> Deborah N. Archer and Kele S. Williams, *Making America “The Land of Second Chances”*: Restoring Socioeconomic Rights for Ex-Offenders, 30 N.Y.U. Rev. L. & Soc. Change 527, 530 (2006).

### ***Infringement Upon Constitutional Rights***

Many of the collateral sanctions associated with a conviction infringe on constitutional rights, including the right to vote, the right to sit on a jury, hold public office, and legally bear arms.<sup>14</sup> Because people with criminal convictions are not a protected class, they are discriminated against without the constitutional rights of equal protection and due process (See Appendix A).

In 2018, as a result of advocacy led by formerly incarcerated advocates and their allies, Louisiana restored the right to vote to nearly 40,000 people on probation and parole.<sup>15</sup> In the same year, a ballot initiative opened the right for people with felonies to hold public office, yet with certain restrictions.<sup>16</sup> However, for people with records, other constitutional rights remain out of reach. Louisianans with felonies are permanently banned from jury duty. In Louisiana's most criminalized communities, this further nullifies the right to a jury of one's peers by deeply constraining the jury pool.

Finally, many convictions lead to permanent bans on the right to bear arms and thus the ability to protect one's family. Without a gubernatorial pardon, most people with gun restrictions as a result of their record will permanently lose access to their Second Amendment right. Blanket bans that deny constitutional and civic rights circumscribe citizenship and undermine notions of liberty.

### ***Employment***

Collateral consequences have grave implications for individuals, families, and entire communities. Recent research has revealed that these post-punishment penalties have significant economic ramifications.<sup>17</sup> Due to statutory discrimination (e.g. occupational licensing restrictions) and baseline prejudice, people with records can expect to earn 40 percent less than their counterparts without records.<sup>18</sup> This is, of course, when people can even find a job. While Louisiana boasts a historically low rate of unemployment (4.7 percent), over 27 percent of people with conviction records remain persistently unemployed despite being more active in the labor market than the general population.<sup>19</sup> One VOTE member noted that he had been fired from his job after his employer ran a background check, and remained unemployed four years later while searching for work.

<sup>14</sup> U.S. Commission on Civil Rights, *supra* note 17, at 22-28.

<sup>15</sup> H.B. 351, 2019 Reg. Sess. (La. 2019)

<sup>16</sup> H.B. 351, 2019 Reg. Sess. (La. 2019)

<sup>17</sup> Mauer et al. *supra* note 11, at 18.

<sup>18</sup> *Id.*

<sup>19</sup> Lucios Culoutte et al., *Out of Prison and Out of Work: Unemployment among formerly incarcerated people*, Prison Policy Initiative, Jul. 2018, <https://www.prisonpolicy.org/reports/outofwork.html>.

This can mean access to some of the state's better paying jobs. In Louisiana, the loss of access to a Transportation Worker Identification Card (TWIC) for a felony offense has serious consequences for working class people seeking living wage employment. One VOTE member took a plea deal to probation believing that without jail time he would avoid more serious consequences. However, when he lost his job as a longshoreman, his family was in immediate crisis. He has since been relegated to performing odd jobs to make ends meet while petitioning for reinstatement under TWIC.

The trickle down starts with a family trying to scrape by and ends with a state that loses millions of dollars as a result of lost earning potential. Economists have estimated that limited employment opportunities for people with records amounts to at least \$87 billion lost from the nation's gross domestic product (GDP).<sup>20</sup> This results in serious ramifications for the state's ability to finance public housing, public education, and services that could alleviate the harm of collateral consequences.

### ***Housing***

Housing is one of the most critical resources to successful reintegration. A conviction record can bar a person from living with their family if a public housing authority denies people with certain convictions, exacerbating hunger and poverty. In 1996, the United States Department of Housing and Urban Development (HUD) enacted strict requirements that allowed public housing authorities (PHAs) to deny eligibility to people with certain convictions.<sup>21</sup> Although Congress only banned people who were either sentenced to the "lifetime" sex offender registry, or convicted for having a methamphetamine laboratory on federal property, in practice the ban has been far more widespread. Protections against open discrimination, as in employment, are scant at best.

PHAs have used arrest and conviction histories to indiscriminately deny and remove entire families from safe housing without due process or warning. Each PHA has the power to make its own rules<sup>22</sup>; East Baton Rouge (EBRPHA), for example, defines "currently engaged in" illegal drug use as to mean any usage over the past five years,<sup>23</sup> and they will exclude a family who, in the past five years, has engaged in any drug related activity, violent criminal activity, criminal activity that may threaten the health, safety or welfare of other tenants, PHA staff, contractors, subcontractors, or agents,

<sup>20</sup> David Plouffe et al., *Shutting Former Criminals Out is Economically Foolish*, USA Today (Nov. 3, 2018), <https://www.usatoday.com/story/opinion/policing/2018/11/23/former-felons-being-pushed-out-workforce-hurting-our-economy/2016435002/>.

<sup>21</sup> U.S. Commission on Civil Rights, *supra* note 17, at 65.

<sup>22</sup> E.g. Housing Authority of the City of Shreveport (HACS), Housing Authority of Jefferson Parish (HAJP), and the Lafayette Housing Authority (LHA) do not have their ACOP on their website.

<sup>23</sup> EBRPHA Admissions and Continued Occupancy Policy (ACOP), May 2018, 3-III.B REQUIRED DENIAL OF ADMISSION, p. 3-21, et. seq.

sexual assault, child abuse, and fraud, bribery or corrupt criminal act in connection with a federal housing program.<sup>24</sup> Conversely, Housing Authority of New Orleans (HANO) passed a progressive policy in 2016 which eliminated all mandatory exclusions, and provided a specific grid so that a person could know if, and how, their conviction history will trigger further panel review.<sup>25</sup>

Despite 2016 HUD guidance that proscribed the use of blanket denials of people with conviction records, individuals routinely report being regularly denied from both public and private housing as a result of convictions, some of which are more than twenty years old.<sup>26</sup> Formerly incarcerated people are ten times more likely to be homeless than the general population, and exponentially more likely to be housing insecure.<sup>27</sup>

### ***Impact of Collateral Consequences on Recidivism***

Research has revealed that recidivism is most often the result of an inability to find stable, living wage work and exclusion from safe housing.<sup>28</sup> Countless studies have linked the insurmountable nature of post-conviction penalties and stigma to high rates of recidivism.<sup>29</sup> Conversely, a University of Michigan study found when that conviction stigma is removed through expungement, not only do people find meaningful jobs with increased wages, but they also desist from crime with negligible recidivism rates.<sup>30</sup> People do not return to prison as a first choice; rather compounded exclusions to life's most basic necessities often make crime a last resort.

## **PLEA BARGAINING AND THE SHIFTING ROLE OF *BOYKIN***

While the U.S. legal system hinges on due process and the constitutional right to a trial, nearly 94 percent of state defendants waive their right to trial in favor of plea bargains.<sup>31</sup>

<sup>24</sup> *Id.*

<sup>25</sup> HANO, ACOP, May 28, 2019. HANO further adopted a policy for contractors that eliminated mandatory employment barriers.

<sup>26</sup> *Id.*

<sup>27</sup> Deborah N. Archer et al., *Making America "The Land of Second Chances": Restoring Socioeconomic Rights for Ex-Offenders*, 30 N.Y.U. Rev. L. & Soc. Change 527, 530 (2006).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> U.S. Commission on Civil Rights, *supra* note 17, at 133.

<sup>31</sup> Clark Neily, *Prisons are packed because prosecutors are coercing plea deals. And, yes, it's totally legal.*, NBC News (Aug. 8, 2019), <https://theappeal.org/justice-in-america-episode-2-the-94-plea-deals/>.  
<https://www.nbcnews.com/think/opinion/prisons-are-packed-because-prosecutors-are-coercing-plea-deals-yes-ncna1034201>.

Through the past six decades of “tough on crime” mass criminalization, plea deals are the standard, not the exception. And the reasons for plea agreements are myriad.

Pretrial detention increases the likelihood that an individual will enter into a plea. According to national data, at least 6 out of 10 people are detained pretrial, and at least half of those people are there simply because they cannot afford bail.<sup>32</sup> Held without relief, sometimes for months and years on end, people – even innocent people – weigh plea deals differently than they might if they were awaiting trial in the community. Survey participants reported taking pleas to avoid losing their job, access to housing, or their parental rights; other participants cited the offer of “time served” as a reason to take a plea.

When faced with the choice of fighting for years from a cell, and the opportunity to return home and provide for their family, many individuals choose the latter. And while plea deals are often viewed as means to basic survival, the consequences of plea deals are grave – leading to more severe charges, longer sentences, and a lifetime of post-conviction penalties.<sup>33</sup>

There are other reasons people plead out: Namely, the inefficiency and inadequacy of a criminal legal system that disproportionately locks up poor people of color.<sup>34</sup> According to the Bureau of Justice Statistics, more than 80 percent of felony defendants are indigent and must rely on representation by a public defender.<sup>35</sup> Underfunding, exorbitant caseloads, and inadequate time or resources to devote to individual cases plague public defender offices.<sup>36</sup> When coupled with bail practices and systemic court delays, people are often encouraged to take plea deals.

Several studies thus lay bare a system of justice that routinely neglects proper adjudication. Instead, prosecutors’ function in a modus operandi of “meet ‘em and plead ‘em,” whereby defendants, irrespective of actual guilt, are pressured into plea bargains. For defendants who cannot afford to hire private counsel and for whom indefinite jail time will have serious consequences, plea-bargaining is facilitated by desperation.

<sup>32</sup> Ram Subramanian et al., Center on Sentencing and Corrections, Ram Subramanian et al., Center on Sentencing and Corrections, *Incarceration’s Front Door: The Misuse of Jails in America*, VERA Institute of Justice, February 2015, at 2.

<sup>33</sup> Subramian et al., *supra* note 27, at 15.

<sup>34</sup> Archer et al., *supra* note 29, at 530.

<sup>35</sup> Alexa Van Brunt, *Poor People Rely on Public Defenders Who Are Too Overworked to Defend Them*, The Guardian (June 17, 2015), <https://www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked>.

<sup>36</sup> *Id.*

### ***The Boykin Process***

The United States provides for constitutional protections for all people accused of crimes, regardless of citizenship.<sup>37</sup> Courtroom-specific rights include the right to a jury trial, to counsel, due process, equal protection, cross-examination of witnesses, and to see all evidence being used against them.<sup>38</sup> These rights are inalienable, and only an individual themselves can waive them.<sup>39</sup>

In the landmark 1969 case, the Supreme Court determined that judges must validate the *voluntariness* of a person waving their constitutional rights, therein requiring the courts to evaluate whether an individual entered a guilty plea with a full understanding of the consequences of that agreement.<sup>40</sup>

In 2010, *Padilla v. Kentucky* required that a defendant be advised of the impact a guilty plea will have on their immigration status, prior to that plea being considered intelligent and voluntary. *Padilla* also provides an important rationale regarding the distinction between direct and collateral consequences, calling that distinction “ill-suited” when the consequence is so closely connected to the criminal process.<sup>41</sup> The same could be said about multiple other consequences that can only be issued as a byproduct of a criminal conviction, i.e. the infringement upon voting rights, upon the right to bear arms, or the right to equal protection under the law. Because, again, there is no other way to lose these rights.

Yet, courts explicitly do not inform defendants that they are surrendering their Constitutional rights during the *Boykin* process, despite the potentially serious ramifications of these penalties.<sup>42</sup> In refuting this obligation, courts argue that collateral consequences are not considered part of the direct sentence.<sup>43</sup> In truth, post-conviction penalties are directly linked to the severity of the court’s sentencing, and thus should be considered part and parcel to the sentence.

## **SURVEY RESULTS**

Over the course of nearly six months, Voice of The Experienced (VOTE) conducted surveys, focus groups, and interviews with criminal legal system stakeholders across

<sup>37</sup> *Padilla*, 559 U.S. at 374.

<sup>38</sup> U.S. Const. amend. XIV.

<sup>39</sup> *Boykin*, 395 U.S. at 249, n. 5.

<sup>40</sup> *Id.* at 241.

<sup>41</sup> *Padilla*, 559 U.S. at 357.

<sup>42</sup> Pinard, *supra* note 12, at 643.

<sup>43</sup> Chin, *supra* note 16, at 1809.

Louisiana as well as with formerly incarcerated community members and advocates. The result of these surveys illustrated the inconsistencies in the Boykin process, as well as the need for basic conformity across the courts to ensure equity in the practice of plea deals.<sup>44</sup>

### ***Opinions From The Bench***

As noted earlier, collateral consequences are invisible at sentencing, not only to the defendant, but also to the judges, prosecutors, and criminal defense attorneys who engage in sentencing recommendations.

Louisiana courts do not have a unified system, which allows for considerable autonomy and variation not only from district to district, but among courtrooms within a district. The wide array of details among courts' *Boykin* procedures are no different. In further discussion with judges, it was clear that individual justices did not all share a common understanding of their duty under *Boykin*. For example, a judge insisted that, under *Boykin*, their only consideration needed to be the "voluntariness" by which the plea was made. Several judges discussed taking mass pleas that would most certainly impact individual defendants differently as a result of their individual histories and circumstances. One judge said, "I have watched ten or twelve people plead at the same time so the judge can go to lunch. They are just given the Boykin form to fill out, and it is a done deal."

Regardless of the original intent for any specific collateral consequence, Louisianans have been experiencing their impacts for multiple generations. The expanded public awareness of collateral consequences' debilitating, punitive, and counterproductive effects has led some Louisiana judges to require basic understanding of this fact during the *Boykin* procedure. One judge pointed to *Padilla* as a model by which judges could expand what constituted fair *Boykin* procedures, including acknowledgement of the loss of rights and potential impact on future cases. A judge with a fairly comprehensive *Boykin* form cited the loss of public housing, school grants, and firearms.

While no two *Boykin* forms looked the same, the majority of judges consulted believed that a uniform *Boykin* procedure would increase the fairness of the courts. Judges asserted that for the court to acknowledge all of the potential collateral consequences was contrary to reason (after all, there are over 44,000), they recognized that a standard *Boykin* hearing could ensure that all defendants had access to knowledge about barriers to housing, education, employment and infringements on constitutional rights. Several judges cited the federal *Boykin* as another model that could be adopted. "It is far more in depth," one judge said. "It lays out a much more realistic picture of the future."

<sup>44</sup> The names and jurisdictions of judges, criminal defense attorneys, and public officials are left anonymous to protect the confidentiality of opinion.

Furthermore, judges acknowledged that at present, there is no system whereby people are informed of the expense of what they give up with regard to civic rights and economic access. Many judges acknowledged that even their own *Boykin* did not articulate information in a way that any person, regardless of education, could understand. Hence, while imperfect, a uniform *Boykin* process could ensure that basic information is shared and accessible prior to waiving fundamental rights.

### ***Defense Attorneys***

Defense attorneys acknowledged that the majority of their energy is put into the mitigation of circumstances; that is, the demarcation of failure or success is “jail or no jail.” As one defense attorney pointed out, “As defense attorneys, that was our mentality, that was the judge’s mentality [in reference to jail or no jail]; we aren’t thinking about the collateral consequences of what comes next. But we do know those consequences play out differently for different socioeconomic classes.”

And yet, defense attorneys felt defeated by any possibility of enacting plea agreements that fully considered the “lifelong punishment” associated with any felony. “We could never actually fully inform our clients of the hardships they will encounter by taking a plea deal. The goal posts keep changing. A client will take a plea based on one thing, just to find out the laws have been re-categorized and now there are far more severe consequences to their conviction.” Another lawyer said, “They are basically bargaining their freedom back with something that is far more costly.”

Most public defenders spoke to the difficulty of getting clients to consider collateral consequences while incarcerated and facing indefinite detention before trial. “If someone is facing an undetermined jail sentence, and on top of that, an indeterminate prison sentence if convicted, and a prosecutor offers up a deal that lets someone out, that client is not thinking about the collateral consequences of their conviction. They are thinking I get to go home to my kids or my mom. It’s not until after that those consequences hit them.”

A critical limitation is that, according to defenders, judges rarely see the systematic barriers a person will face after sentencing as their concern, or even part of the punishment they are imposing. In many cases, public defenders pointed out that the *Boykin* hearing is usually little more than a cursory acknowledgement. One attorney said, “Certain judges don’t even do a *Boykin* eighty percent of the time. It is wild.”

Attorneys expressed that collateral consequences must be dismantled through legislative statute and regulatory action, and efforts be made to eliminate discrimination against

people with felony records if plea deals were to be truly fair. However, attorneys also recognized the benefit of judges participating in a uniform, if not more comprehensive *Boykin* that considered collateral consequences. “Just having judges be knowledgeable about the damage of collateral consequences might lead to better sentencing,” one attorney said. Judges might take the severity of life consequences into consideration, and people would leave courts with a basic understanding of the consequences, permanent and otherwise, of their conviction.

### ***Community Advocates and VOTE Members***

It is often the people most marginalized from systems that can provide the most insight into how systems impact families and communities in the immediate and over time. VOTE worked with partner organizations and members to develop a community-based survey on the impact collateral consequences have on their families, as well as to reveal how little understanding of these consequences people have when taking a plea bargain.<sup>45</sup>

Almost every community participant expressed that they were largely unaware of the severity of collateral consequences until they returned home from prison. Many participants wrote that the only information they received from the court was that which pertained directly to plea bargain process, and nothing more. Respondents confirmed much of what attorneys said about pleading out. One man said, “They kept me in the parish jail for so long that I was forced to take a plea deal... They knew that if they kept me there, I would eventually get tired and eventually plead guilty just to get out.” While the respondent felt he had made the right choice, he now saw barriers everywhere he looked: to jobs, to benefits, to a more meaningful life. Many other respondents stated that they would not have pled guilty if they had known how the collateral consequences of a conviction were going to impact them and their families so dramatically.

Even when individuals believed they understood the consequences of their plea, the reality was far worse. Finding gainful and meaningful employment was nearly impossible. One respondent had applied to over 70 jobs and was denied. Another young man stated that he did not have access to permanent housing and was sleeping on the couches of friends and family. The majority of respondents spoke of the difficulty of maintaining economic stability with a felony conviction on their record. One respondent said, “It has been harder in every form of life... just getting a decent job and a home is hard.” Another young person described what felt like double jeopardy: “You take a plea and they lock you up. You get out, and then you are locked out.”

<sup>45</sup> VOTE (Voice of the Experienced) -NOLA, the First 72+, Louisiana for Prison Reform, Promise of Justice Initiative, the Pelican Institute, and many more.

## CONCLUSIONS

A criminal record can produce a lifetime of collateral consequences: it fractures families, leads to situational disenfranchisement, as well as excludes people and their loved ones from access to housing, healthcare, and employment. These consequences are the result of intentional policy decisions made by our state's elected representatives. In Louisiana, one-in-three working age adults has a criminal conviction; thus, we can no longer feign ignorance to the perpetual consequences that wreak havoc on the social and economic fabric of our communities.

Punishment does not end with the completion of one's sentence. Instead people are punished again and again, locked out of jobs and housing, stripped of their constitutional rights, without equal protections against discrimination, and degraded by the stigmatization society has attached to *any* conviction. The people of Louisiana deserve fair chances, which can only come in working to ensure that people have access to opportunity once they have paid their debt. One pathway is educating systems stakeholders and community members about how collateral consequences will forever impact their lives. A more complete way is to begin to dismantle collateral consequences altogether.

In August of 2018, the American Bar Association released a report entitled *Ten Guidelines on Court Fines and Fees*.<sup>46</sup> Their guidance discussed the need for attorneys of indigent clients to use their representation as a meaningful opportunity to fully inform their clients of all the implications of pleading guilty.<sup>47</sup> For the first time in history, this included the collateral consequences of conviction. The acknowledgement of post-conviction punishment is one that recognizes the severity of collateral consequences.<sup>48</sup> It is something courts are beginning to realize as well.

In Ohio, local nonprofits worked with state agencies to create a state-wide database of collateral consequences.<sup>49</sup> Using a simple interface, the database, called CIVICC, has streamlined consequences of a conviction so that it is accessible to judges, attorneys, and most critically, defendants.<sup>50</sup> In plain language, it displays quite clearly *all* of the potential consequences of pleading to one charge versus another. In some Ohio courts,

<sup>46</sup> A.B.A. Res. 114, *ABA Ten Guidelines on Court Fines and Fees*, Working Group on Building Public Trust in the American Justice System 11 (2018).

<sup>47</sup> *Id.* at 10.

<sup>48</sup> *Id.*

<sup>49</sup> Ohio Justice & Policy Center, *Civil Impacts of Criminal Convictions under Ohio Law*, <https://civicc.opd.ohio.gov> (last visited Jan. 28, 2020).

<sup>50</sup> *Id.*

attorneys have used CIVICC as a tool to gauge plea deals, while judges have used it to mitigate sentencing.<sup>51</sup>

As we begin to dismantle what is more and more frequently seen as an overwrought and biased criminal legal system, systems actors can and should be informed of the barriers we have erected to fair chances and begin to find creative ways to dismantle them.

## RECOMMENDATIONS

1. **ENACT A STATEWIDE *BOYKIN* STANDARD:** The information shared with a defendant in a *Boykin* procedure must, at the very least, advise people of the mandatory infringements upon their constitutional rights. The procedure should also add all reasonable infringements upon their constitutional rights. These rights include being subjected to legalized discrimination. The standard should be comprehensive and uniform to ensure equity and fairness in each and every courtroom. See Appendix B.
2. **CREATE STATE DATABASE OF COLLATERAL CONSEQUENCES:** There are several clearinghouse databases of collateral consequences currently available to the general public. The National Inventory of Collateral Consequences has provided a mechanism to find and track specific collateral consequences of a conviction by state and offense. However, the database is difficult to use. The CIVICC model, deployed by Ohio, provides a much simpler tool for judges, attorneys, and people to assess the collateral impact of a particular sentence in real time. Judges should ensure a person has had access to the database before waiving their rights.
3. **CONSIDERATION OF COLLATERAL CONSEQUENCES IN SENTENCING:** Judges, prosecutors, and defense attorneys should consider collateral consequences in plea negotiations and weigh the full punitive nature of the guilty plea, and not merely “jail or no jail.” This should be included in a uniform *Boykin* form.
4. **LEGISLATIVE ACTION TO REDUCE UNNECESSARY COLLATERAL CONSEQUENCES:** Louisiana has 1,339 laws and statutes that impose post-conviction barriers to basic life necessities. No conviction should be a life sentence. No conviction should keep a mother from feeding her children or a child

<sup>51</sup> Collateral Consequences Resource Center, <https://ccresourcecenter.org/2014/11/25/ohios-line-inventory-collateral-consequences-useful-tool-defense-lawyers/> (last visited Jan. 28, 2020).

from obtaining higher education. Punishment should not be perpetual, and redemption should be reachable. The Louisiana State Legislature should work to reduce legislative barriers to occupational licensing, while expanding access to record sealing, fair hiring, and fair housing. Any infringement on constitutionally protected rights should be eradicated.

**5. PLACING A SHARED BURDEN FOR COURTROOM PRACTITIONERS:**

It is unreasonable to require prosecutors or courts to be held responsible for advising defendants regarding all impacts of a conviction, particularly where important information may require sharing privileged details. However, it is not enough simply to place all the duty upon defense counsel. Similar to Boykin, the defense attorneys are best positioned to discuss relevant details regarding the decision to waive a jury trial, for example, while the judge is positioned to ensure the defendant had such a conversation and is satisfied with the results.

## APPENDICES

### APPENDIX A: Louisiana Constitutional Consequences:

1. Art. I, § 2 Due Process of Law
2. Art. I, § 3 Individual Dignity - no slavery or involuntary servitude except for incarceration sentence -- as punishment for a crime.
3. Art. I, § 4 Right to Property - (B)(5) Eminent domain for hearing and just compensation; (D) forfeited + disposed for drugs charges in many ways.
4. Art. I, § 5 Right to Privacy
5. Art. I, § 10 Right to Vote - Suspended for interdiction + imprisonment for conviction of felony; disqualification for seeking/holding office - (B)(1) Felony + not pardoned; (B)(2) Felony imprisonment; (C) Unless 15 or more years ago.
6. Art. I, § 10.1 Disqualification from seeking/holding elective office or appointment - (A) Disqualification for (1) felony imprisonment, (2) felony + no pardon; (B) Unless five years since completion of sentence [not applicable to state employees].
7. Art. I, § 11 Right to Bear Arms shall not be infringed upon unless strict scrutiny is applied.
8. Art. I, § 17 Unanimous Jury as of 1/1/19.
9. \*Art. I, § 20 Right to Humane Treatment; full rights restored after federal supervision following a conviction for any offense.

**APPENDIX B: Proposed Waiver of Constitutional Rights Form**

People charged with criminal offenses are free to plead guilty, and convict themselves, provided they are intelligent and voluntary waiver of rights. By signing this form, you acknowledge that you have been informed of this conviction’s impact upon your otherwise inalienable rights under the laws of Louisiana and the United States.

I hereby waive my constitutional right to:

- Be free from self-incrimination: \_\_\_\_\_ (initials);
- Confront the evidence that may be presented against me: \_\_\_\_\_;
- Have a trial by a jury of my peers: \_\_\_\_\_;

I have been informed about how my conviction will infringe upon:

- My right to vote: \_\_\_\_\_;
- My right to bear arms: \_\_\_\_\_;
- My right to equal protection and be free from discrimination: \_\_\_\_\_;
- My right to Due Process, and stricter consequences for future criminal convictions: \_\_\_\_\_;

I understand that this conviction may have a direct impact upon my:

- Immigration status, and I may be deported: \_\_\_\_\_;
- Public housing status, and I (and/or my family) may be evicted: \_\_\_\_\_;
- Education status, and my financial aid may be revoked: \_\_\_\_\_;
- Employment status, and I may not be eligible to continue my occupation: \_\_\_\_\_;

My attorney has informed me that they have communicated all plea offers made by the state:

\_\_\_\_\_  
Attorney signature

\_\_\_\_\_  
Defendant Initials

This plea of guilty is made in exchange for the sentence promised to me, and I have been informed of all monetary sanctions, which are:

\_\_\_\_\_  
[To be filled in by Clerk, and/or court officers]

I hereby make this voluntary and intelligent waiver of my rights:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPENDIX C: CRIMINAL/SENTENCING: Provides relative to pleas of guilty or nolo contendere in felony cases**

2020 Regular Session

HOUSE BILL NO. \_\_\_\_

BY REPRESENTATIVE \_\_\_\_\_

Pre-filed pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/SENTENCING: Provides relative to pleas of guilty or nolo contendere in felony cases

AN ACT

To amend and reenact Code of Criminal Procedure Article 556.1(C) and to enact Code of Criminal Procedure Article 556.1(A)(5), relative to pleas in criminal cases; to provide relative to pleas of guilty or nolo contendere in felony cases; to provide relative to duties of the court or defense counsel; to require the court or defense counsel to inform a defendant of additional waiver of constitutional rights as a result of a guilty plea or nolo contendere; to require the court to inquire of the defendant or defense counsel of plea offers made by the state; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 556.1(C) is hereby amended and reenacted and Code of Criminal Procedure Article 556.1(A)(5) is hereby enacted to read as follows:

Art. 556.1. Plea of guilty or nolo contendere in felony cases; duties of the court and defense counsel

A. In a felony case, the court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and informing him of, and determining that he understands, all of the following:

\* \* \*

(5) That if he pleads guilty or nolo contendere, he will be subject to additional consequences and/or waivers of constitutional rights in the following areas as a result of this plea, for which defense counsel or the court

(a) shall inform him regarding:

- (i) Potential deportation, for a person who is not a United States citizen.
- (ii) the right to vote;

- (iii) the right to bear arms.
- (iv) the right to due process.
- (v) the right to equal protection, and
- (b) may inform him of additional direct or potential consequences impacting:
  - (i) College admissions and financial aid;
  - (ii) Public housing benefits;
  - (iii) Employment and licensing restrictions;
  - (iv) Potential sentencing as a habitual offender.
  - (v) Standard of proof for probation or parole revocations.

**Abstract:** Provides relative to the duties of the court and defense counsel when a defendant pleads guilty or nolo contendere in felony cases.

Present law provides that the court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and informing him of, and determining that he understands, certain things including but not limited to: the nature of the charges against him and the penalties for such offense; that he has a right to be represented by an attorney at every stage of the proceeding against him; and that if he pleads guilty or nolo contendere, he waives his right to a trial, right to confront evidence, and the right to be free of self-incrimination.

Proposed law provides that the defendant is also informed that he may be subject to additional consequences in the following areas as a result of his plea of guilty or nolo contendere, including waiving otherwise inalienable constitutional rights, for which defense counsel or the court is required to inform him:

- (1) Potential deportation, for a person who is not a U.S. citizen, following *Padilla v. Kentucky*.
- (2) Voting rights.
- (3) Right to bear arms.
- (4) Right to equal protection and due process
- (5) Forfeiture of, or exclusion from, public housing.
- (6) Issuance of licenses, and barriers to employment.
- (7) College admissions and financial aid.
- (8) Potential sentencing as a habitual offender.
- (9) Standard of proof for probation or parole revocations.

(Amends La. Code Crim. Proc. Ann. Art. § 556.1(C); Adds La. Code Crim. Proc. Ann. Art. § 556.1(A)(5))

