

# San Antonio Criminal Justice Action Coalition

To educate and engage the public on the issue of mass incarceration in an effort to bring about fundamental reform of our justice system

---

## **INVISIBLE SANCTIONS: The Ongoing Stigma of Criminal Conviction**

An invisible or collateral sanction occurs because of a conviction, but is not part of a sentence for a crime. While throughout history convicted offenders have been denied certain rights and benefits of citizenship, the scope and severity of such sanctions has increased dramatically during the current era of mass incarceration (since 1983) and heightened mandatory sentencing. “In this brave new world, punishment for the original offense is no longer enough; one’s debt to society is never paid. Some commentators refer to this form of punishment as internal exile. Others liken this extreme labeling to the mark of Cain, and the effects of these sanctions as relegating the offender to the status of non-citizen, almost a pariah” (Jeremy Travis, *Invisible Punishment*, *Urban Institute*, July 2002).

In the state of Texas, criminal convictions can have a broad range of serious consequences for the offender. These invisible sanctions can limit access to employment, housing, voting, education funding, federal assistance, public office and jury service. They can also involve asset forfeiture and surcharges. The following are just a few examples of these collateral sanctions. Some of them were found in Randy Leavitt, *Invisible Punishments*, presented to the Austin Criminal Defense Lawyers Association on June 18, 2013.

**Employment** – Felony conviction can lead to automatic revocation of or ineligibility for dozens of federal and state licenses required for a wide variety of occupations (e.g., barber, auto parts recycler, electrician, elevator inspector). (*See Chapter 53 of the Texas Occupations Code for details*). The EEOC issued guidelines in 2012 that held that blanket discrimination based on criminal record alone is insufficient reason to deny employment. This has yet to be tested in the courts, and more critically in state legislatures; however in November 2013, the Texas Attorney General filed suit against the EEOC arguing that the EEOC’s guidelines limit employers from excluding convicted felons from employment.

**Housing** – Federal housing policies allow for the exclusion of drug offenders from federally funded housing. A tenant’s lease may be terminated if they or any member of their household or any guest engages in drug-related or any other criminal activity on or off the premises. The tenants can be evicted regardless of whether they had knowledge of or participated in such activity. Because of this, many families are reluctant to allow relatives to reside with them, especially those family members who are formerly incarcerated.

**Education Funding** – Basic federal education grants (e.g., Pell) are not available to those incarcerated in state or federal penal institutions. Students convicted of any offense involving the possession or sale of a

# San Antonio Criminal Justice Action Coalition

To educate and engage the public on the issue of mass incarceration in an effort to bring about fundamental reform of our justice system

---

controlled substance can become ineligible for federal loans or grants. State education funding can also be lost as the result of a criminal conviction (e.g., TEXAS grant, TEXAS II grant).

**Federal Assistance** – Federal law poses a lifetime ban on food stamps and federally funded assistance for drug felons *unless a state elects otherwise*. Texas does not opt out and imposes the ban in its entirety. Therefore a young single mother convicted of felony possession of marijuana in Texas will never be able to get food stamps for her family while someone convicted of a much more serious crime would retain eligibility.

**Asset Forfeiture** – Asset forfeiture can occur in both state and federal courts, especially in drug cases. In one case, a defendant who won a five million dollar lottery had to forfeit the money because he was unable to show how he earned money except by dealing cocaine (*U.S. v. Bentancourt, 422 F.3d 240 – 5<sup>th</sup> Cir. 2005*).

**Surcharges** – The Texas legislature passed legislation in 2003 that imposes surcharges upon individuals who have certain convictions and license suspensions. For example, an annual surcharge of \$1,000 to \$2,000 per year will be assessed for up to 3 years on a person convicted of an offense relating to operating a motor vehicle while intoxicated.

**Voting** – A convicted felon in the state of Texas may not vote in a public election until he or she has been pardoned or fully discharges the sentence. This includes any term of incarceration, parole, supervision or period of probation.

**Public Office** – A citizen convicted of a felony may never run for or be appointed to public elective office in Texas unless pardoned “or otherwise released from the resulting disabilities” (*see Texas Election Code 141.001*).

**Jury Service** – A citizen convicted of or currently charged with misdemeanor theft or any felony may not serve on a jury in Texas.

*As fellow community members, we can only ensure the repair of harm caused by law breakers by assuring that once they have served their time and returned home that they have access to the rights that will allow them to once again achieve full restoration of citizenship.*

*When we feel **accepted**, we are reintegrated.*

*When we feel **forgiveness**, we are redeemed.*

*When we feel **whole**, we are restored.*

(April 2014)