

Do Work Barriers for Justice-Impacted Individuals Incentivize Criminal Behavior?

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This study explores the legal barriers created by state governments for justice-impacted individuals. The more work barriers the state creates for someone with a criminal record, the more attractive illegal activities become. We examine differences across states in the data set provided by the National Inventory of Collateral Consequences of Conviction. We compare incarceration rates, unemployment rates, and labor force participation rates to the number of rules that affect someone with a criminal background. Our results predict that states with more collateral consequences will have higher per-capita imprisonment, higher unemployment, and lower labor force participation rates.

Keywords: collateral consequences, occupational licensing, justice-impacted individuals, unemployment, incarceration rate

INTRODUCTION

The U.S. has the highest incarceration rate in the World (Fair & Walmsley, 2021). However, incarceration rates across the U.S. states vary greatly - up to a factor of five. According to the U.S. Department of Justice (2020), the 2019 imprisonment rate per 100,000 people ranged from 133 in Massachusetts to 680 in Louisiana. These justice-impacted individuals will be subjected to a wide variance of treatment across states when they are released. Correctional institutions release many prisoners each year. The DOJ (2020) estimated that state and federal prisons released 608,000 sentenced prisoners in 2019. It's also not just prisoners that are justice-impacted. Nearly 1 out of 5 people in the U.S. have some sort of criminal record (Craigie, Grawert, and Kimble, 2020). Our study focuses on state regulations that affect the ability of someone with a criminal background to get back into the labor force, become employed, and stay out of a correctional institution. These regulatory barriers are often referred to as "collateral consequences" of criminal conviction.

States vary in their number of regulations that affect justice-impacted individuals. To compile this list, we refer to the National Inventory of Collateral Consequences of Conviction (NICCC), a project funded by

the US Department of Justice. Collateral consequences refer to a host of regulatory and legal restrictions that impact the lives of justice-impacted individuals in a scope beyond the terms of their initial sentence, citation, and/or fine. Collateral consequences limit or take away rights and freedoms from individuals with criminal records in wide-ranging ways that have a heavy impact on one's ability to be a functional member of society. The most significant impact collateral consequences have on these individuals is in reducing employment opportunities, primarily through business and occupational licensing. Other impacted areas include education, voting rights, ability to find housing, and other rights and opportunities.

The NICCC has cataloged over 40,000 distinct collateral consequences nationally, with an average of 1,700 per jurisdiction. As noted by the U.S. Commission on Civil Rights (USCCR, 2019), between 70 and 100 million Americans have some kind of criminal record and are affected by collateral consequences of conviction, arrest, or incarceration. Given the demographics of American prisons, people of color are disproportionately impacted by the collateral consequences (Nellis, 2021).

These rules can also negatively impact the economy because they block employment opportunities. Schmitt and Warner (2010) found that job opportunities artificially limited by collateral consequences cost the US economy between "\$57 and \$65 billion in lost output" in 2008.

Employment barriers make up the majority of collateral consequences nationally, accounting for 72 percent of the total. Occupational licensing regulations make up the largest proportion of employment barriers. Business licensing and hiring and retention policies account for the remainder. Healthcare is the most heavily affected field, followed by public sector employment and the financial sector. Additionally, the majority of collateral consequences are indefinite, as there is no delimitation of time or expected expiration date, which means justice-impacted people are often tied to them for life. Both public and private employers commonly have their own restrictions on hiring individuals with criminal records, exacerbating the issue. Approximately one quarter of Americans are restricted from some job opportunities due to collateral consequences (USCCR, 2019). Pager, Western, and Sugie (2009) discovered that job applicants with criminal records are nearly 50 percent less likely to receive callbacks or job offers.

Collateral consequences are often applied wrongfully (Horn, 2019). The application of consequences often involves administrators of different agencies matching and transcribing criminal records. Errors can and do build up. The criminal records themselves are known to often be inaccurate. Individuals are frequently matched with the wrong records, ending up with consequences for crimes they did not commit (Horn, 2019). Poorly written legislation also contributes to this problem. The use of "catchall" phrases and clauses with unclear time delimitations creates the need for legal interpretation, leading to consequences being unevenly applied to different people.

Our study contributes to the literature in two ways: 1) we use a case study of Arkansas to highlight examples and effects of collateral consequences, and 2) We explore the relationship between the number of collateral consequences and imprisonment rates, unemployment rates, and labor force participation rates through regression analysis. The following section explores the literature on the subject; section III discusses Arkansas-specific regulations; section IV introduces the data; section V provides analysis; and section VI provides conclusions with policy implications.

LITERATURE ON COLLATERAL CONSEQUENCES

It is well known in the academic literature that a criminal conviction increases the probability of an individual engaging in more crime and being unemployed. These collateral consequences of conviction have been discussed by researchers for decades. Freeman (1992) discovered that a criminal past has long-term adverse consequences in employment. Lockwood, et al. (2012) found that an offender's education and employment were the best predictors of recidivism in Indiana. Skardhamar and Telle (2012) surveyed people released from Norwegian prisons and estimated that it took 30 months for 30% of former inmates to become employed. The risk of recidivism was higher for those unemployed. Uggen (2000) used a survey of people with arrest histories in the U.S. and found that employment reduced recidivism for those above age 27. Verweij, Weijters, and Wermink (2021) used a sample of prisoners from Dutch prisons and found that employment decreased the likelihood of recidivism. Visher & Courtney (2007) used a survey of

released prisoners from Ohio and discovered that employment was a key factor that reduced the probability of being reincarcerated.

Given the understanding of the importance of employment to prevent recidivism, the U.S. Congress passed the Second Chance Act in 2008 with bipartisan support. This act funded programs and research to help released prisoners become productive citizens and stay out of correctional facilities.

One issue that affects the ability of a justice-impacted individual to gain employment is occupational licensing regulation. Occupational licensing regulations have been on the rise in recent decades. Kleiner and Krueger (2013) found in their work that about five percent of the U.S. workforce required a license in the 1950s, but that number had increased to about 29 percent in a 2008 survey. Many licensing boards require expensive education and training and can also reject applicants for having a criminal record. Those released from prison may have a difficult time getting the required education since they likely do not have the ability to pay bills and go to school. Snyder and Ouattara (2017) found that states with more occupational licensing regulations had higher property crime rates. Blair and Chung (2018) estimated that occupational licensing rules lower labor supply by 17 to 27 percent.

CASE STUDY: COLLATERAL CONSEQUENCES IN ARKANSAS

We can use the State of Arkansas to illustrate the extent of state regulations that affect justice-impacted individuals. Arkansas has a relatively high number of collateral consequences, especially employment-related consequences. As of January 2021, Arkansas imposed 752 employment-related consequences, with 288 relating to occupational licensing, and another 197 relating to business licensing (NICCC, 2022). These numbers are average for the mid-South but somewhat higher than the national average.

Some consequences do make sense. Most would agree that the person jailed for child molestation should not be allowed to teach kindergarten when they get out, and that the car thief should not be a car dealer. But many of the rules, even if well-intentioned, block the justice-impacted from getting into an appropriate profession. For example, a person that doesn't pay child support in Arkansas can be stripped of their ability to get a commercial driver's license (§ 27-23-125 (2020)), or be blocked from selling insurance (AR Code § 23-64-201 (2018)), in addition to being barred from other jobs. These rules go beyond fines, wage garnishment, or jail time; they affect someone's ability to legally earn a living.

Many applicants must pass a background check to work in a licensed profession. This may eliminate justice-impacted individuals from getting back into the workforce because it allows, and possibly instructs, licensing boards to reject their applications. Passing a background check can be difficult, even if the profession is not relevant to the crime committed. For example, everyone in Arkansas can apply pesticide in their home without government permission. But if someone wants to get paid to do it, they must get a license. To get a license to earn a living applying pesticide in Arkansas, the "applicant must prove to the satisfaction of the [Arkansas State Plant] board that he is morally and financially responsible" (§ 17-37-206).

Society must decide what it wants someone to do after serving time for dealing drugs, or shoplifting, or physical assault. If a justice-impacted individual is not even allowed to get a job in pest control, what can they do? People often express fears that ex-felons can hurt someone. Ex-felons may not even be able to work with the already dead. In Arkansas, for example, an applicant must pass the background check to be a licensed embalmer (§ 17-29-301). What if a former felon corrected his life, mentally and physically, and wanted to share his diet expertise? The Arkansas Dietetics Licensing Board can reject his application because of the felony (§ 17-83-307, 2010). If a person served time for aggravated assault and wants to be a productive member of society when released, it will be difficult to do so. They will likely be denied a barber's license, be unable to register as an interior designer, or get any other job that requires a background check in Arkansas. There is a plethora of good-paying, skilled jobs that justice-impacted people are restricted from.

Sometimes the collateral consequences of conviction are simply punitive. An officer can impound a person's car if they are arrested for prostitution in Arkansas (AR Code § 5-5-501). Individuals often choose

to engage in prostitution out of a desperate need for basic resources such as food and shelter. Impounding their car makes them poorer and makes it more difficult to seek other forms of employment (Murphy, 2010).

Licensing boards in Arkansas have also denied well-qualified candidates for very trivial issues that have come up in criminal background checks. For example, Casey Ball of Arkansas had an Industrial Engineering degree with a Master's in Accountancy. He passed his CPA exams, and he was very qualified for the license. But Casey was denied the license because his criminal background check revealed that he possessed a fake ID when he was a 20-year-old college student. He was fined \$285 for the fake ID at the time, but the collateral consequence of being denied the CPA license almost changed the trajectory of his life and his ability to support his family. Fortunately, Ball was able to appeal the denial and win with legal representation (Hearing No. H17-003, January 2017).

A very similar situation occurred with Thomas Herrell of Arkansas. He passed all the required CPA exams to get a CPA license, but he was initially denied licensure because he was once arrested for possessing a (never used) fake ID when he was 20 years old. He also had to appeal his case with legal representation (Hearing No. H17-005, April 21, 2017). The reasons for these denials were the "moral turpitude or dishonesty" provisions. While Arkansas recently eliminated some of these "moral character" provisions with ACT 990 of 2019, many other state's licensing boards have these checks that can be a severe collateral consequence for an original minor infraction.

DATA

The purpose of this empirical investigation is to explore the impact of these state regulations that affect justice-impacted individuals. By examining the relationship of collateral consequences with imprisonment rates, unemployment rates, and labor force participation rates, we could begin to illustrate the cost of these barriers.

Our data is at the state level. The main independent variable of interest is the number of "collateral consequences" enforced by the state, which is the list of regulations that affect justice-impacted individuals beyond the sentencing. To see the effect of these rules on outcomes, we examine three different dependent variables: incarceration rates, unemployment rates, and labor-force participation rates.

Figure 1 displays the differences across states in the number of collateral consequences.

The five states with the most collateral consequences are Texas, California, Ohio, Illinois, and Louisiana. The states with the least collateral consequences are Vermont, Hawaii, South Dakota, Wyoming, and Rhode Island. The number of state collateral consequences range from 319 in Vermont to 1636 in Texas.

FIGURE 1
NUMBER OF COLLATERAL CONSEQUENCES ACROSS STATES

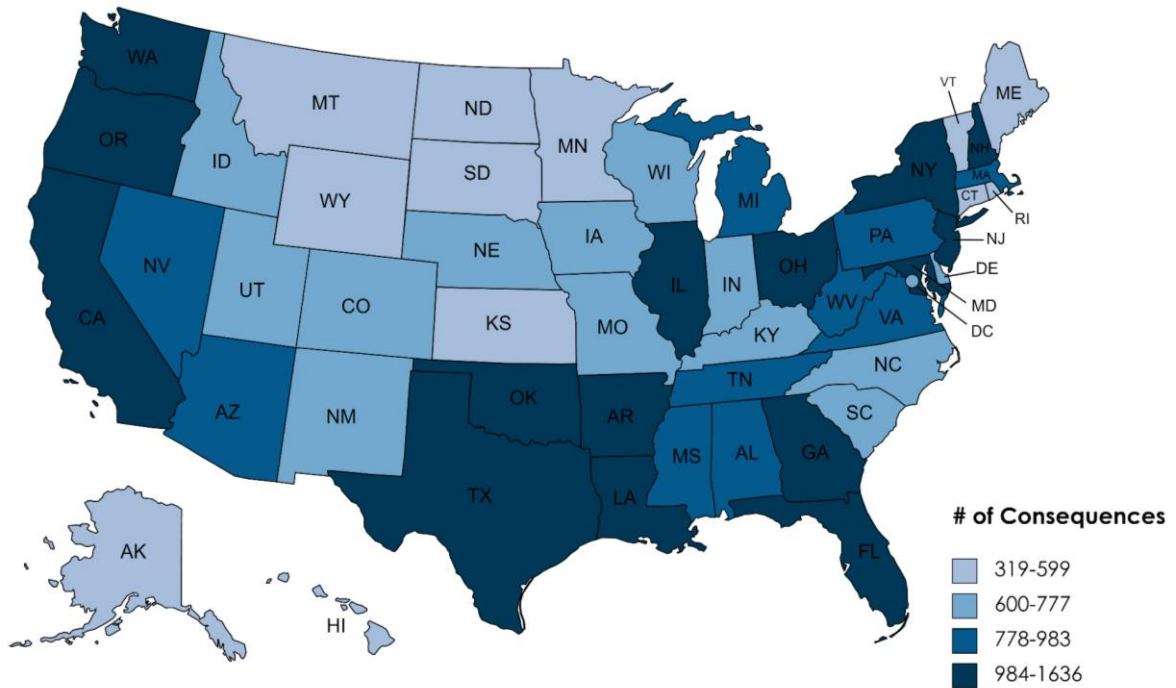


TABLE 1
SUMMARY STATISTICS

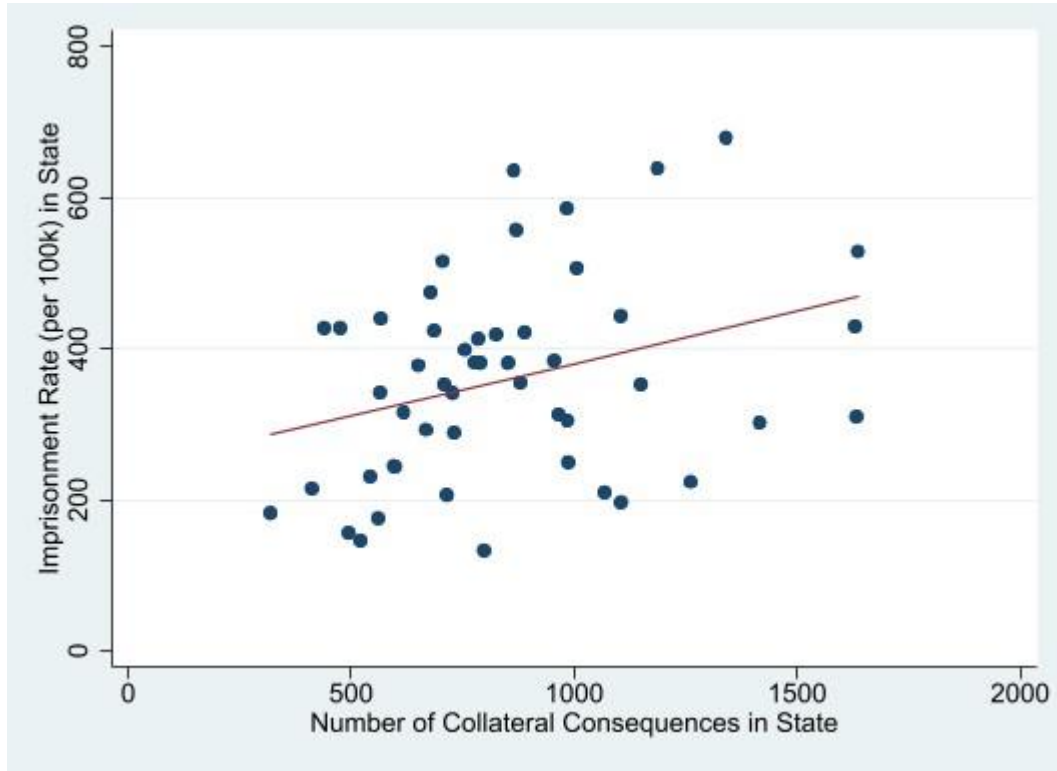
Variable	Obs	Mean	Std. dev.	Min	Max	Description	Source
Collateral Consequences	53	825.08	323.41	226.00	1636.00	The National Inventory of Collateral Consequences of Conviction catalogs both State and Federal consequences for each State's Jurisdiction in 2019.	https://niccc.nationalreentryresourcecenter.org/consequences

Variable	Obs	Mean	Std. dev.	Min	Max	Description	Source
State Imprisonment Rate (per 100k) in 2019	50	359.32	133.68	133.00	680.00	Counts of Prisoners for both State and Federal prison during 2019.	Prisoners in 2019 Bureau of Justice Statistics (ojp.gov)
Unemployment Rate	51	3.58	0.81	2.30	5.50	Unemployment statistics during 2019 as reported by the US Bureau of Labor Statistics	https://www.bls.gov
Labor Force Participation Rate	51	63.87	3.94	55.10	71.50	Labor Force Participation from the St Louis FRED during 2019	https://fred.stlouisfed.org
GDP per Capita in 2019	51	63980.09	23012.98	38966.90	203173.20	GDP per capita as reported by the Bureau of Economic Analysis during 2019	bea.gov
College Degree (25+)	52	31.66	6.42	20.60	58.50	% of population by state from 2015-2019 of adults 25+ that graduated college.	https://data.ers.usda.gov
pop10k	52	637.37	730.20	57.88	3951.22	Population estimates by state from the US Census Bureau in the 10s of thousands	https://www.census.gov

The data is from 2019, or approximate, and it is for all 50 states and territories that report data. Because the data on collateral consequences has not been collected over the years, we can only take a snapshot of the relationships between these rules and the outcomes. With this snapshot though, a strong correlation appears to exist.

Figure 2 displays the relationship between the number of collateral consequences and the imprisonment rate (prisoners per 100k) across states.

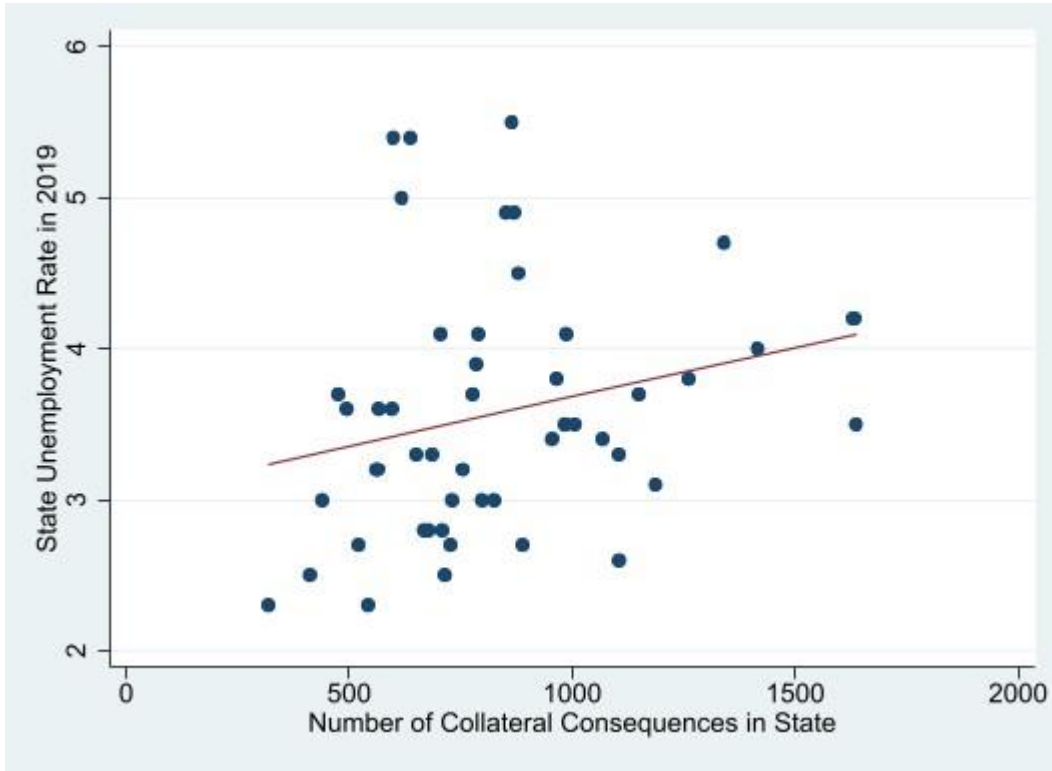
FIGURE 2
STATE COLLATERAL CONSEQUENCES AND IMPRISONMENT RATE



There is a positive relationship between the number of collateral consequences and the imprisonment rate across states. This result is what we would predict if the collateral consequences were causing more people to go to or return to jail. Those who have criminal backgrounds, but no jail time, may still face barriers to work. Those who were released from jail face even more barriers and may have an increased incentive to recidivate. The graph also has no obvious outliers that can distort magnitudes in a regression analysis, given the small dataset. The difference between the observation and linear prediction seems to also be quite consistent from lower to higher units. These observations give us more confidence in the reliability of our regression analysis.

Figure 3 plots the relationship between the number of collateral and the state unemployment rate in 2019.

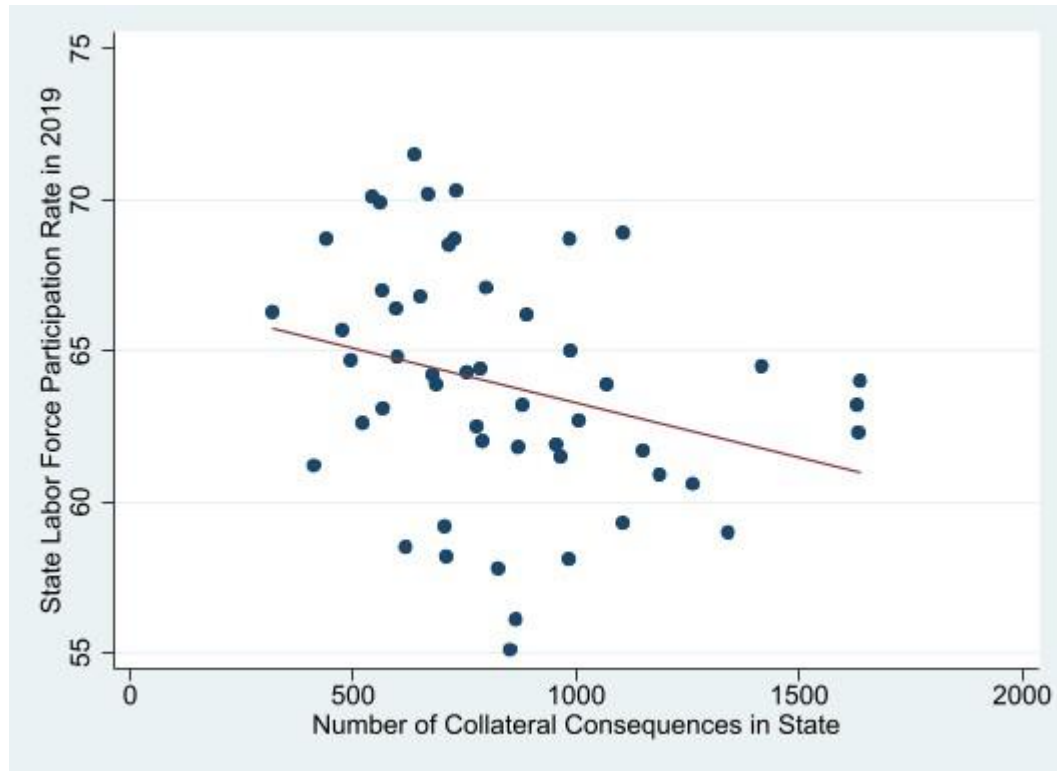
FIGURE 3
STATE COLLATERAL CONSEQUENCES AND UNEMPLOYMENT RATE



The number of collateral consequences has a positive relationship with the state unemployment rate. This is consistent with the argument that a higher number of barriers to work will create less employment. The way unemployment is calculated, it will not include those who are out of the labor force. Therefore, we also look at the labor force participation rate.

Figure 4 plots the relationship between the number of collateral consequences and the labor-force participation rate. The data shows a negative relationship. This result is expected if the collateral consequences act as a barrier for those with criminal backgrounds to legally be part of the labor force.

FIGURE 4
STATE COLLATERAL CONSEQUENCES AND LABOR-FORCE PARTICIPATION RATE



Figures 2-4 display a correlation between collateral consequences and labor market outcomes, but we must test for statistical significance and control for relevant variables to see if that relationship is robust. The following section tests to see if there is a statistically-significant relationship between the number of collateral consequences and 1) imprisonment rates, 2) unemployment rates, and/or 3) labor force participation rates.

ANALYSIS AND RESULTS

Here we take a snapshot of the correlation between collateral consequences and the unintended consequences. Ideally, we would examine rule changes overtime, before and after, but the currently available collateral consequences data is restricted to just one year (approximately 2019) across states. Given this restriction on the data size, we limit our control variables to a few economic and demographic variables across states, including GDP per capita, percentage of adults (25+ years old) with a college degree, and the population level.

TABLE 2
COLLATERAL CONSEQUENCES AND IMPRISONMENT RATES:
CROSS-STATE OLS ESTIMATES

Variable	State Imprisonment rate (per 100k) in 2019		
	(1)	(2)	(3)
Ln(Collateral Consequences)	133.05 ***	151.02 ***	139.12 ***
	<i>49.69</i>	<i>43.77</i>	<i>49.97</i>
Ln(GDP per capita 2019)		-423.80 ***	-184.25 *
		<i>65.27</i>	<i>95.80</i>
College Degree			-11.87 ***
			<i>3.97</i>
Population per 10k			-0.01
			<i>0.02</i>
Constant	-529.40	4014.11 ***	1832.11 *
	<i>327.35</i>	<i>723.56</i>	<i>997.74</i>
N	50	50	50
R_sq	0.13	0.49	0.6

Note: Robust Standard Errors are in italics.

*** 1% significance level, ** 5% significance level, * 10% significance level.

Table 2 displays the estimates of ordinary least squares (OLS) of the relationship between collateral consequences and the state imprisonment rate per 100k. We take the natural log of collateral consequences to examine percentage changes. Model 1 only includes collateral consequences as an independent variable. Model 2 includes GDP per capita, as lower incomes and less economic opportunities may encourage more crime. Model 3 also includes educational attainment and population levels. More education can lead to more employment opportunities and less incentive to commit crime. A higher population may lead to more potential victims of crime, but it can also lead to more opportunities for employment.

All models in Table 2 display a positive and statistically-significant relationship between collateral consequences and imprisonment rates across states. For example, Model 3 in Table 2 says that a 10-percent increase in collateral consequences predicts an increase in 13.9 more prisoners per 100k across states. The coefficients on GDP per capita and College Degree have the predictable signs. States with higher income and states with higher education attainment have lower incarceration rates. There was no statistical relationship between population and incarceration rates.

To illustrate the predictions of the model, we'll use Arkansas as an example. If Arkansas' state government reduced its number of collateral consequences (984) to that of Missouri (685), a 30.39% reduction, our model would predict that Arkansas would lower its imprisonment rate by 42.27 people for every 100,000 residents. Given Arkansas' population of just over 3.025 million residents (2021 Census), our model predicts that 1,278 residents would not be imprisoned in Arkansas if the government reduced their number of collateral consequences to match Missouri. Just in terms of explicit incarceration costs, the average daily cost per inmate in 2019 was \$65.68 according to Arkansas Department of Corrections (www.arkleg.state.ar.us). This means that our model predicts that Arkansas would save an extra \$65.68 x 365 x 1,287 = \$30,637,750 per year if it had Missouri's number of collateral consequences. Of course, many of these inmates could also be living productive lives contributing to society and paying taxes if they weren't locked up. That would be a large benefit too.

Table 3 examines the relationship between collateral consequences and the unemployment rate. The data is from 2019, where unemployment was at its lowest in decades. Yet, we still find that more collateral consequences predict higher unemployment rates across states. All three models show a positive and statistically-significant relationship. Model 3 in Table 3 says that a 10-percent increase in collateral consequences predicts a 0.07-increase in the unemployment rate.

TABLE 3
COLLATERAL CONSEQUENCES AND UNEMPLOYMENT RATES:
CROSS-STATE OLS ESTIMATES

Variable	State Unemployment Rate in 2019		
	(1)	(2)	(3)
Ln(Collateral Consequences)	0.6405 ***	0.6400 ***	0.7314 **
	<i>0.2396</i>	<i>0.2377</i>	<i>0.3274</i>
Ln(GDP per capita 2019)		0.3417	1.8075 *
		<i>0.7267</i>	<i>0.9571</i>
College Degree			-0.0679 **
			<i>0.0292</i>
Population per 10k			-0.0002
			<i>0.0002</i>
Constant	-0.6971	-4.4629	-18.9812 *
	<i>1.6332</i>	<i>7.7104</i>	<i>9.5286</i>
N	51	51	51
R_sq overall	0.0812	0.0926	0.1965

Note: Robust Standard Errors are in italics.

† *** 1% significance level, ** 5% significance level, * 10% significance level.

To take an example, using January 2022 numbers from the BLS, Arkansas's labor force is 1,334,900 individuals. If Arkansas reduced their collateral consequences to that of Missouri, our model would predict that the unemployment rate would fall by 0.22%. This would imply that 2,967 more residents in Arkansas would be employed if the state were to reduce the number of collateral consequences to that of its northern neighbor. This number is in addition to those imprisoned, as those incarcerated are not counted as unemployed. In other words, this model predicts that Arkansas' excess rules compared to Missouri leaves $1,278 + 2,967 = 4,245$ people unemployed or incarcerated.

If a state government enacts many barriers to work for someone with a criminal past, that person may simply leave the labor force completely. People who give up trying to find legal employment are not counted as unemployed. To capture this possibility, Table 4 examines the relationship between the number of collateral consequences and labor force participation rates across states.

Each model in Table 4 displays a negative and statistically-significant relationship between the number of collateral consequences and the labor force participation rates across states. Model 3 in the table above says that a ten-percent increase in collateral consequences predicts a decrease in labor-force participation rate by 0.25 percentage points. A better economy and a more educated population are associated with more people in the labor force.

To continue with our example, if Arkansas were to reduce its collateral consequences to that of Missouri, a decrease of 30.39%, our model predicts that the labor force participation rate would increase by $30.39 \times 0.0255 = 0.775$ percentage points. According to the BLS, the February 2022 civilian noninstitutionalized population in Arkansas is 2,371,248. The labor force is 1,339,378, which is 56.48% of the population. The labor force would increase to 57.255 of the population, or 1,357,658. This means that our model predicts an increase of 18,280 people in the Arkansas labor force if the state government would lower its number of collateral consequences to match Missouri.

The labor force participation rate computes those employed and unemployed out of the percentage of the noninstitutionalized population. Table 2 looks at those incarcerated, which are considered institutionalized. If we were to combine those two effects, our model predicts that Arkansas would have $1,278 + 18,280 = 19,558$ more people living productive lives if it were to lower its collateral consequences to its northern neighbor.

TABLE 4
COLLATERAL CONSEQUENCES AND LABOR FORCE PARTICIPATION RATES:
CROSS-STATE OLS ESTIMATES

Variable	State Labor Force Participation Rate in 2019		
	(1)	(2)	(3)
Ln(Collateral Consequences)	-3.4140*** <i>1.1160</i>	-3.4261*** <i>1.0679</i>	-2.5450* <i>1.5007</i>
Ln(GDP per capita 2019)		9.3451*** <i>2.0950</i>	5.3808* <i>3.0786</i>
College Degree			0.1966 <i>0.1067</i> *
Population per 10k			-0.0004 <i>0.0007</i>
Constant	86.6564*** <i>7.5324</i>	-16.3202 <i>23.8176</i>	15.5282 <i>31.0223</i>
N	51	51	51
R_sq overall	0.0978	0.459	0.4935

Note: Robust Standard Errors are in italics.

†*** 1% significance level, ** 5% significance level, * 10% significance level.

CONCLUSION

The state regulations that create barriers to justice-impacted individuals may have negative impacts not considered by policymakers. These negative impacts, or collateral consequences, are predictable but not typically part of any sentencing. A likely consensus of people would want someone with a criminal background to return to a legal and productive life within the law. Occupational licensing rules and other restrictions block this return for people with criminal backgrounds.

Our study explored the data to see if such barriers do in fact show up at the broad level for the state. We do find that a high number of barriers is associated with higher incarceration rates, higher unemployment, and a lower labor force participation rate.

Policymakers that narrowly focus on one rule, say barring someone from a job because of missing child support payments, or only allowing financially responsible people to become pest control applicators, may think that the rule is an effective deterrent of crime or that the justice-impacted individual will just go elsewhere. But as the rules accumulate and more doors begin to close, justice-impacted individuals have fewer and fewer legal options and can find themselves locked out from the rest of society. The opportunity cost of crime becomes lower and lower. And our evidence supports the notion that these restrictive policies may backfire for society.

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