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THIRD-CLASS CITIZENSHIP: THE ESCALATING LEGAL CONSEQUENCES OF COMMITTING A "VIOLENT" CRIME

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For many years, American legislatures have been steadily attaching a wide range of legal consequences to convictions—and sometimes even just charges—for crimes that are classified as "violent." These consequences affect many key aspects of the criminal process, including pretrial detention, eligibility for pretrial diversion, sentencing, eligibility for parole and other opportunities for release from incarceration, and the length and intensity of supervision in the community. The consequences can also affect a person's legal status and rights long after the sentence for the underlying offense has been served. A conviction for a violent crime can result in registration requirements, lifetime disqualification from employment in certain fields, and a loss of parental rights, among many other "collateral consequences." While a criminal conviction of any sort relegates a person to a kind of second-class citizenship in the United States, a conviction for a violent crime increasingly seems even more momentous—pushing the person into a veritable third-class citizenship.

This Article provides the first systematic treatment of the legal consequences that result from a violence charge or conviction. The Article surveys the statutory law of all fifty states, including the diverse and sometimes surprisingly broad definitions of what counts as a violent crime. While the Article's aims are primarily empirical, concerns are raised along the way regarding the fairness and utility of the growing length and severity of sentences imposed on "violent" offenders and of the increasingly daunting barriers to their reintegration into society.

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INTRODUCTION

No federal statute has proven more of a jurisprudential quagmire for the United States Supreme Court in recent years than the Armed Career Criminal Act (ACCA). At first blush, the ACCA's basic structure seems straightforward enough: any person with three or more prior convictions for a violent felony or serious drug offense who is found in possession of a firearm is subject to a mandatory minimum prison term of fifteen years. But the statute's implementation has been bedeviled by a surprisingly complex definitional problem: what counts as a "violent felony"? Time and again, the Supreme Court has returned to this problem in order to resolve circuit splits. For instance, in 2007, the Court decided that attempted burglary is a violent felony. By contrast, in 2008, the Court ruled that the crime of driving under the influence does not count as violent. The very next year, the Court similarly held that the offense of failing to report for penal confinement is not violent. In 2011, though, the Court decided that vehicular flight from a law enforcement officer is violent. Then, in the 2015 case of Johnson v. United States, in frustration with the seemingly endless ACCA litigation bubbling up from the lower courts, the Court declared a key portion of the statutory definition of "violent felony" to be unconstitutionally vague. The majority opinion noted the "Court's repeated attempts and repeated failures to craft a principled and objective standard out of the [definitional provision.]" Yet, even Johnson failed to stem the tide of ACCA cases. In April 2018, the Court granted certiorari in Stokeling v. United States in order to decide whether the crime of robbery, as defined in Florida law, counts as violent.

While notable in its own right, the growing body of ACCA cases also highlights a more generalized and increasingly important feature of American criminal law: convictions for "violent" crimes—however the term is defined—carry a unique weight relative to other convictions. For instance, consider the ACCA in its legal context. Under federal law, a conviction of any felony disqualifies a person from possessing a firearm, but the penalty for violating this restriction is normally no more than ten years in prison, with no mandatory minimum. However, if that felony is classified as "violent," and if there are two others so classified on the defendant's record, then, by virtue of the ACCA, the penalty balloons to a minimum of fifteen years and a maximum of life.

Similarly, though with far less national visibility, state criminal codes are full of their own sentence-enhancement provisions that are triggered by prior convictions for "violence." However, such recidivism statutes only begin to scratch the surface of the special significance of a conviction (or even just a charge) for a violent crime. Depending on the state, violent

offenders may confront distinct procedural rules, special sentencing provisions, disqualification from a wide range of jobs that are otherwise open to individuals with felony convictions, disqualification from rehabilitative treatment programs, and disqualification from opportunities to earn an accelerated release from prison. By way of shorthand, I will refer to these various legal consequences of a violence charge or conviction collectively as categorical violence consequences, or "CVCs."

As is well known, conviction of a crime—especially if it is a felony—results in a sharp, multidimensional loss of legal status such that individuals with convictions seem reduced to a sort of second-class citizenship. Increasingly, though, the growing network of CVCs seem to impose on violent offenders an even deeper loss of status than that which follows from other convictions—a veritable third-class citizenship.

Constructed quietly in an ad hoc, piecemeal fashion over the course of a generation, this third-class citizenship has received no sustained attention from legal scholars. This Article thus constitutes a first effort to systematically identify and assess the significance of the growing network of CVCs.

The aims here are primarily empirical, not normative, although several points of concern are noted along the way. A comprehensive critique and reform proposal must await another day, but the present work lays a necessary foundation by surveying and drawing attention to current legal arrangements. Indeed, what is problematic about these arrangements cannot be fully perceived without an appreciation of the number, scope, and mutually reinforcing character of CVCs. For instance, viewed in isolation, a particular employment disqualification for individuals who have a violent-crime conviction might seem reasonable enough, but when seen in relation to a web of additional employment disqualifications, long mandatory minimum prison terms, exclusions from potentially beneficial treatment programs, and stigmatizing offender registration requirements, the same CVC may be more properly viewed as one component of a system of laws that collectively serve to hold a large group of former offenders in a permanently degraded social status.

Although unique in its focus, this Article complements and draws insight from four substantial, overlapping bodies of existing scholarship. First, numerous authors have critically assessed recidivism laws, which require longer sentences for repeat offenders, as in a "three strikes and you are out" statute. Many, but not all, recidivism laws particularly target repeat offenders who have been convicted of violent crimes. Such laws are a small, but significant, part of the broader CVC phenomenon considered here. Second, a growing body of research catalogs and critiques the so-called

"collateral" consequences of criminal convictions. These are adverse legal consequences, such as categorical bars to working in certain fields or obtaining certain kinds of public benefits, that follow from a conviction, but that are not formally part of the sentence. Many collateral consequences apply broadly to any felony conviction, but some are expressly limited to convictions for violent crimes. The latter collateral consequences constitute another significant part of the CVC phenomenon. Third, many scholars have evaluated some of the special legal consequences that can result from a conviction for a sexual offense, such as registration requirements, residence restrictions, and indefinite civil commitment. Sexual offenders face a set of consequences that are, if anything, even harsher and more numerous than those facing violent offenders—perhaps establishing a fourth-class citizenship for them. Consequences that are specific to sexual crimes lie beyond the scope of this Article, but it should be noted that some of the criticisms that have been raised about these consequences—e.g., that social isolation of offenders may increase rather than diminish their recidivism risk—might also be applicable to some CVCs. Fourth, and finally, another body of research assesses the impact of "justice reinvestment" reforms. Adopted in more than two dozen states since 2004, these reforms have been premised on the belief that public-safety outcomes could be improved if more offenders were diverted from costly prison cells and the resulting savings "reinvested" in evidence-based rehabilitative treatment programs and other crime-prevention initiatives. Despite some notable successes, the justice reinvestment movement has thus far fallen well short of expectations in reducing incarceration. One important weakness has been the tendency for reforms to draw sharp, categorical distinctions between violent and nonviolent offenders, excluding the former from the new divert-and-treat paradigm and thus contributing to the broader network of CVCs.

The remainder of the Article is organized as follows. Part I canvasses the wide range of statutory definitions of "violent crime," "violent offense," and "violent felony" that have been adopted by different states for CVC purposes. Importantly, many such definitions sweep in large numbers of offenses that lie outside core understandings of what constitutes violence. Part II highlights other ways in which CVCs can have an unexpectedly wide reach. For instance, depending on the state, CVCs might be triggered by a misdemeanor conviction, a juvenile adjudication, or an old conviction of an individual who has been crime-free for many years or even decades. Part III, the heart of the article, provides a thorough, fifty-state overview of statutory CVCs. The consequences are divided into five major categories: pre-conviction, sentencing, corrections, juvenile, and collateral. Part IV briefly turns to the normative, outlining potential concerns with CVCs in the

areas of fair notice, proportionality in punishment, and efficacy in protecting public safety. Finally, Part V concludes with a consideration of potential next steps that could be taken to begin addressing the concerns.

Before proceeding, a word about terminology is in order. The Article makes frequent use of terms like "violent crime" and "violent offense." These terms are meant to refer to crimes that fit into the relevant jurisdiction's legal definition of "violent crime" (or "offense")—which may include crime that lies outside ordinary understandings of what is violent. In other words, the terms are used not in their lay sense, but in a technical legal sense. Similarly, the term "violent offender" here refers to the individuals who are subject to a CVC based on the supposed commission of a crime that is legally categorized as "violent." The term is not meant to indicate that the person has a propensity to engage in any particular kind of criminal misconduct. Put differently, while "violent offender" seems commonly used in political rhetoric and media reporting as a synonym for "dangerous criminal," that usage is not the one that is employed here. Some of the individuals who are labeled "violent" for our purposes are probably quite dangerous, but others are surely not.

I. WHAT MAKES A CRIME "VIOLENT"?

States have adopted a wide variety of different statutory definitions for "violent crime" and related terms. Based on their structure, the definitions can be divided into three categories: qualitative, laundry list, and hybrid.

A. QUALITATIVE STATUTORY DEFINITIONS

Qualitative definitions, which are the least common, distinguish "violent" from other offenses based on the presence of certain generic characteristics. An Arkansas statute supplies a helpful illustration, defining "crime of violence" as "any violation of Arkansas law in which a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person, specifically including rape."[1] This seems a reasonably clear, focused definition marking out a core set of offenses that most people would likely recognize as "violent."

Other statutes reach more broadly. An Arizona statute, for instance, defines "violent crime" as "any criminal act that results in death or physical

[1] ARK. CODE ANN. § 5-42-203 (2017). For another similar formulation, *see*, *e.g.*, N.D. CENT. CODE § 12.1-06.2-01(2) (West, Westlaw through 2017 Reg. Sess.) ("Crime of violence means any violation of state law where a person knowingly causes or threatens to cause death or physical bodily injury to another person or persons.").

injury or any criminal use of a deadly weapon or dangerous instrument."[2] Like the Arkansas definition, Arizona's includes physical injury as a component, but without the mens rea constraints; read for all it is worth, the Arizona language might treat some accidental injuries as acts of violence. The contrast here marks an important fault line: as we will see, states vary as to whether and in what circumstances they include unintentional injuring in their definitions of violence. Note, too, another important difference between the Arkansas and Arizona laws: even in the absence of a physical injury, the Arizona statute would still treat as violent any crime involving the use of a "deadly weapon or dangerous instrument." The underlying idea seems to be that "violence" should include conduct that has an objectively dangerous character, without regard to whether any physical injury was actually caused or intended.

A qualitative definition from California highlights additional fault lines. Under this statute, a "crime of violence" is "an offense that has as an element the use, attempted use, or threatened use of *physical force* against the person *or property* of another."[3] The California law is broader than the Arkansas definition along two dimensions. First, it turns on a use of force, rather than an injury. Although the concepts overlap, force can be used against a person without intending or causing injury—think, for instance, of physically restraining another person. Second, and even more importantly, the California definition includes offenses that are directed solely against property, as contrasted with those directed against persons. Although it is conventional to distinguish violent from property offenses, the California statute, like others we will consider below, blurs the distinction.

B. LAUNDRY LIST DEFINITIONS

Purely qualitative definitions inevitably present interpretive problems and raise concerns that defendants, lawyers, and others may not be able to determine in advance of litigation which CVCs apply to whom. In order to avoid such uncertainties, many statutory violence definitions take the form of a list of specific offenses, often with statutory cross-references so that there can be no doubt about which offenses the legislature meant to classify as violent. Some lists include little more than a handful of offenses, while others run to mind-numbing length.

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[2] ARIZ. REV. STAT. ANN. § 13-901.03 (2010).

[3] CAL. PENAL CODE § 423.1(a) (West, Westlaw through Ch. 13 of 2018 Reg. Sess.) (emphasis added).

1. List Content

A relatively narrow list that seems in the spirit of the qualitative Arkansas statute—that is, mostly sticking to a core, consensus set of "violent" crimes—comes from Georgia, which defines "serious violent felony" to include these seven offenses:

- Murder (including felony murder);
- Armed robbery;
- Kidnapping;
- Rape;
- Aggravated child molestation (involving either physical injury to the victim or, in some circumstances, sodomy);
- Aggravated (forcible) sodomy; and
- Aggravated sexual battery (nonconsensual penetration with a foreign object).[4]

By contrast, Delaware's list of "violent felonies" includes no fewer than *eighty-four* offenses.[5] While that list appears to be the longest, several others include twenty or more.[6] The longer lists, not surprisingly, tend to include a number of offenses that seem to lie outside the violent crime core. Consider a few examples.

Burglary. Burglary is commonly included in laundry list statutes.[7] Such an inclusion has great practical significance, for burglary is a relatively common offense. For instance, the number of burglary arrests in the United States far exceeds the combined total number of arrests for murder, rape, and robbery.[8] Treating burglary as a violent offense may follow from that particular concern for property interests that we saw in the California qualitative statute, which associated "crime of violence" with a use of force against "the person *or property* of another."[9] However, burglary may also be seen as an offense with a more serious character than most other property crimes. This distinctive character comes from the common-law definition of

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[4] GA. CODE ANN. § 17-10-6.1 (West 2014).

[5] *See* DEL. CODE ANN. tit. 11, § 4201 (2015).

[6] *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 13-706(F)(2) (2017) (listing twenty-four offenses in definition of "violent or aggravated felony"); ARK. CODE ANN. § 5-4-501(d)(2) (2017) (listing twenty-six offenses in definition of "felony involving violence").

[7] *See, e.g.*, ARK. CODE ANN. § 5-4-501(d)(2)(A)(xi) (2017); DEL. CODE ANN. tit. 11, § 4201; IND. CODE § 35-50-1-2(a)(14) (2016).

[8] *See* FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, 2016, at tbl. 18 (2017).

[9] CAL. PENAL CODE § 423.1(a) (West, Westlaw through Ch. 13 of 2018 Reg. Sess.) (emphasis added).

burglary as the breaking and entering *of a dwelling*.[10] Arguably, such a criminal act relates to the core, assaultive violent offenses in two ways. First, an invasion of the dwelling may feel like such a profound intrusion into one's private space as to seem almost like a violation of one's bodily integrity. Second, if the burglar encounters a resident within the dwelling, there is apt to be a physical confrontation between the two. Yet, while it may be easy to see why the burglary of a dwelling might be classified alongside offenses like rape, robbery, and assault, most contemporary burglary statutes are drafted more broadly so as to cover entry into any "building" or "structure," and some reach even vehicles and vending machines.[11] In recognition of this breadth, some—but by no means all—of the laundry list statutes that include burglary specifically limit the "violent" classification to aggravated forms of the offense, such as armed burglary or burglary of an occupied dwelling.[12]

Larceny (Theft). If burglary, at least as traditionally defined, seems only a slight step removed from the consensus core of "violent crime," larceny (also known as theft) represents a much greater extension from the core. Larceny need not involve any invasion of a private space, nor any substantial risk of physical confrontation.[13] Yet, several laundry list statutes specifically include larceny.[14] This not only rejects the conventionally recognized distinction between violent and property crime, but also subjects a much larger number of individuals to CVCs. In 2016, for instance, there were more than one million larceny arrests in the United States, a number that far outstripped the combined total arrests for burglary, murder, rape, robbery, and aggravated assault.[15]

Drug Offenses. In some respects, drug offenses seem even further removed from core understandings of violence than does larceny: drug offenses do not have a victim in the conventional sense of the term, but instead target uncoerced transactions and the personal possession or use of controlled substances. Nonetheless, several laundry list statutes classify

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[10] WAYNE R. LAFAVE, CRIMINAL LAW § 21.1 (5th ed. 2010).

[11] *Id*. § 21.1(c).

[12] *See, e.g.*, § 511.020 (defining burglary in the first degree as burglary committed while armed, burglary causing a physical injury, or burglary involving the use or threatened use of a "dangerous instrument"); KY. REV. STAT. ANN. § 532.200(3) (2010) (defining "violent felony offense" to include burglary in the first degree).

[13] *See* LAFAVE, *supra* note 42, § 19.2(i) (noting that trespass element of theft can be satisfied even if property not removed from presence or premises of another).

[14] *See, e.g.*, ARK. CODE ANN. § 5-73-202(1)(K) (2017); R.I. GEN. LAWS tit. 12, § 12-1.5-2(8) (West 2012).

[15] *See* FED. BUREAU OF INVESTIGATION, *supra* note 7 at tbl. 18.

some drug offenses as violent.[16] This doubtlessly reflects certain practical connections thought to exist between drug crimes and core violence. For instance, it is known that individuals who are arrested for core violent offenses test positive for drug use at a much higher rate than the general population.[17] However, such correlation does not prove causation, and more rigorous research has generally failed to find evidence of a direct causal link between drug use and violent behavior.[18] The more important drug-violence connection lies in the use of force to settle trafficking-related disputes, given the inability of drug dealers to utilize the normal legal mechanisms for resolving business-related conflict.[19] For any particular drug transaction, though, physical harm is merely a risk, and possibly a rather remote one at that. Thus, when drug offenses are characterized as "violent" for CVC purposes, the definition seems to embrace an especially expansive risk-based definition of violence and to dispense with the aggravated mens rea as to physical injury that is required, for instance, in the Arkansas qualitative statute.[20]

Sexual Offenses. Nearly all of the laundry list statutes include sexual offenses.[21] This is not surprising because some sexual offenses, particularly rape and other aggravated sexual assaults, plainly lie within the core understanding of violence. However, the listed sexual offenses also sometimes include crimes that do not necessarily involve physical injury or the use or threatened use of force. For instance, some form of "statutory"

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[16] *See, e.g.*, IND. CODE §§ 35-47-4-5(b)(24)–(28) (2017) (defining "serious violent felony" to include dealing or manufacturing certain controlled substances); MINN. STAT. § 624.712(5) (2015) (defining "crime of violence" to include felony-level drug offenses); N.C. GEN. STAT. § 15A-145.5(a)(5) (West 2017) (excluding from "nonviolent" definition offenses involving cocaine, heroin, or methamphetamines).

[17] Jeffrey A. Miron, *Drug Prohibition and Violence, in* 1 REFORMING CRIMINAL JUSTICE: INTRODUCTION AND CRIMINALIZATION 99, 106 (Erik Luna ed., 2017).

[18] *Id*. at 106–07.

[19] *See id*. at 100–01, 112.

[20] *See* ARK. CODE ANN. § 5-42-203 (2017) (including in definition of "crime of violence" that "person *purposely* or *knowingly* causes, or threatens to cause, death or physical injury to another person") (emphasis added). Note that the term "threatens" (found in the Arkansas definition alongside the conventional mens rea terms "purposely" and "knowingly") is also often interpreted in criminal law so as to include a *mens rea* component. *See, e.g.*, Elonis v. United States, 135 S. Ct. 2001, 2012 (2015) (holding that conviction under federal threat statute requires proof that defendant's *purpose* was to transmit threat, that defendant *knew* communication would be viewed as threat, or perhaps that defendant was *reckless* in this regard; mere negligence is not sufficient).

[21] For a rare counterexample, see TENN. CODE ANN. § 39-12-301(2) (West, Westlaw through May 21, 2018, 2d Reg. Sess.) (defining "crime of force or violence" to mean aggravated assault, robbery, and aggravated burglary).

rape is commonly a listed offense.[22] This crime involves sexual contact with a person below a particular age without regard to that person's consent. Depending on the state, statutory rape may include a wide range of conduct of widely varying harmfulness and culpability.[23] For instance, a good-faith mistake of age might not be available as a defense, while liability might be triggered by superficial, clothed contact, or by contact between contemporaries or near-contemporaries in a romantic relationship.[24] Beyond statutory rape, some laundry lists also include the distribution of images of underaged individuals engaging in (or possibly just simulating) sexual activity,[25] possession of child pornography,[26] or the display of one's private parts to a minor.[27] All of this conduct is, of course, undesirable and can sometimes involve extremely serious victimization. Other times, however, the character of the conduct may differ quite substantially from core understandings of violence.

Other. Many more examples could be supplied of offenses that might strike some readers as odd or unexpected to find on a list of "violent crimes." These include, for instance:

- Neglect of a patient, child or impaired adult[28];
- Escape[29];

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[22] *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 13-706(F)(2)(i), (k) (2017) (defining "violent or aggravated felony" to include sexual conduct with a minor and molestation of a child); DEL. CODE ANN. tit. 11, § 4201(c) (2015) (defining "violent felonies" to include unlawful sexual contact in the second degree (contact with person under eighteen)); MINN. STAT. § 624.712(5) (2015) (defining "crime of violence" to include criminal sexual conduct in the fourth degree, which includes various age-based sexual offenses).

[23] *See* LAFAVE, *supra* note 42, § 17.4(c) (describing variation in state statutory rape laws).

[24] *Id*.

[25] *See, e.g.*, DEL. CODE ANN. tit. 11, § 4201(c) (2015) (defining "violent felonies" to include dealing in child pornography); IND. CODE § 35-50-1-2(a)(17) (2016) (defining "crime of violence" to include child exploitation); WIS. STAT. § 939.632 (2016) (defining "violent crime" to include sexual exploitation of a child).

[26] OKLA. STAT. ANN. tit. 57, § 571 (1976).

[27] *See, e.g.*, FLA. STAT. § 775.084(1)(d)(1)(e) (West 2016) (defining "violent career criminal" to include those convicted three times of lewd or lascivious exhibition); *cf.* WIS. STAT. § 939.632 (2016) (defining "violent crime" to include causing a child to see or listen to sexual activity).

[28] *See, e.g.*, DEL. CODE ANN. tit. 11, § 4201 (2015) (patient, impaired adult); MINN. STAT. § 624.712(5) (2015) (child); UTAH CODE ANN. § 76-3-203.5(c)(i)(K) (West 2018) (child with disability).

[29] *See, e.g.*, DEL. CODE ANN. tit. 11, § 4201 (2015); IND. CODE § 35-47-4-5(b)(19) (2017); OHIO REV. CODE ANN. § 2901.01(9)(a) (West 2017).

- Driving under the influence[30];
- Carrying a concealed weapon[31];
- Unlawful possession of an explosive, chemical, or incendiary device[32];
- Violation of an order of protection[33];
- Extortion[34];
- Inducing panic, defined as causing a "serious public inconvenience or alarm" by, *inter alia*, circulating a false report of a fire, explosion, or crime[35]; and
- Attempting to dissuade a witness from giving testimony.[36]

To be sure, all of these offenses do encompass some highly culpable, harmful conduct, but their elements are sufficiently broad as to sweep in additional conduct that does not involve an intent or threat to cause physical injury to another.[37]

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[30] *See, e.g.*, 730 ILL. COMP. STAT. ANN. 5/5-6-2(c-1) (West 2015); MISS. CODE ANN. § 97-3-2(1)(a) (West, Westlaw through laws from the 2018 Reg. Sess. effective through June 29, 2018).

[31] *See* DEL. CODE ANN. tit. 11, § 4201 (2015); WIS. STAT. § 939.632 (2016).

[32] *See* UTAH CODE ANN. § 76-3-203.5(c)(i) (West 2018).

[33] *See, e.g.*, 730 ILL. COMP. STAT. ANN. 5/5-6-2(c-1) (West 2015).

[34] *See, e.g.*, DEL. CODE ANN. tit. 11, § 4201 (2015).

[35] *See* OHIO REV. CODE ANN. 2917.31(A), §§ 2901.01(9)(a). (West 2017).

[36] *See, e.g.*, OHIO REV. CODE ANN. § 2901.01(9)(a) (West 2017); N.H. REV. STAT. ANN. § 135:17-b(II)(g) (2012); 18 PA. CONS. STAT. § 5702(1)(iii) (2017).

[37] From a drafting perspective, the basic dilemma is this: there are some offenses that are often committed in ways that fit core understandings of violence, but that can be committed without the sort of conduct that would generally be recognized as violent. For instance, the crime of escape from a detention facility could be accomplished by shooting one's way out (violent) or by sneaking out through a tunnel (nonviolent). A potential solution would be to specify that offenses like escape only count as "violent" when they are committed in certain ways (e.g., through the use or threatened use of force) or otherwise cause physical injuries. However, this approach would present practical challenges insofar as it would require a court or agency to make determinations about the facts underlying a conviction, which could require obtaining old records from another jurisdiction. Even then, especially if the conviction was obtained without trial via a guilty plea, the court record may be too sparse to support reliable judgments about key facts related to the crime. Additionally, the process might become more cumbersome still to the extent that a person's jury-trial rights were triggered by this fact-finding. Although there is no right to have a jury determine the *existence* of prior convictions, there may be such a right with respect to underlying facts. *See* Shepard v. United States, 544 U.S. 13, 25 (2005) (for purposes of determining whether a prior conviction counts as a "burglary" under the ACCA, indicating that judicial fact-finding regarding the manner that the crime was committed would raise "serious risks of unconstitutionality").

2. The Federalism Problem

There is a subtle, but sometimes quite important, federalism problem with laundry-list definitions: a person living in one state may have an out-of-state conviction that seems pertinent for CVC purposes, but the other state's substantive criminal law may not match up well with the home state's definitional schema. This can create uncertainty for everyone involved—the offender, courts, correctional authorities, potential employers, and so forth—and there is no entirely satisfactory way to resolve the difficulty. If a state's definition of violent crime is simply a list of statutory references to specific provisions in its own criminal code, then out-of-state convictions would never trigger a CVC no matter how clearly they are encompassed within the spirit of the definition. Yet, even laundry lists that provide offense names ("murder," "robbery," etc.) instead of just statutory references can present problems: some offenses carry different names in different states (e.g., "larceny" and "theft"), while other offenses have the same name but substantially different elements. Recall, for instance, that some modern burglary statutes are much broader than the common-law offense of burglary, but others continue to employ the traditional approach.[38]

In order to deal with such difficulties, laundry list statutes often expressly include out-of-state convictions for offenses that are substantively similar to the listed in-state offenses. For instance, an Arkansas definition of "serious felony involving violence" includes any "[c]onviction of a comparable serious felony involving violence from another jurisdiction."[39] Likewise, an Indiana definition of "serious violent felon" includes individuals with a conviction in "any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a serious violent felony [under Indiana law]."[40] Meanwhile, in Minnesota, "violent crime" includes violations of specified Minnesota statutes "or any similar laws of the United States or any other state."[41] Such provisions introduce some potentially helpful flexibility into the laundry list statutes, but at the cost of exacerbating uncertainties in the application of CVCs. Terms like "comparable" and "substantially similar" may leave much room for interpretive debate in specific cases.

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[38] *Supra* Part I.B.1.

[39] ARK. CODE ANN. § 5-4-501(c)(2)(B) (2017).

[40] IND. CODE § 35-47-4-5(a)(1)(B) (2017).

[41] MINN. STAT. § 609.1095(1)(d) (2014).

C. HYBRID STATUTES

Hybrid statutes combine a laundry list with qualitative provisions. Structured in this way, a statutory definition can ensure that certain specific offenses of particular concern are treated as "crimes of violence," while preserving flexibility for the inclusion of additional unlisted offenses of a similar character. This saves drafters the trouble of combing the criminal code for every pertinent offense and of continually updating the statutory definition as offenses are added, deleted, renamed, renumbered, or otherwise modified.

The federal ACCA provides a good example. The statute defines "violent felony" as follows:

> any crime punishable by imprisonment for a term exceeding one year . . . that—
>
> (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another . . . .[42]

The relatively brief ACCA laundry list includes burglary, arson, and extortion—all common, but not universal, items on other lists—while the qualitative components add to these specific offenses any other offenses that have a force-related element or that present "a serious risk of physical injury." (The latter component constitutes the so-called residual clause that was found void for vagueness in *Johnson v. United States*[43]; the other portions of the definition remain legally operative.) The qualitative provisions echo themes that we have seen in other qualitative statutes: use or threat of force against another person, risk of physical injury, and use of explosives.

In principle, hybrid statutes seem to offer the best of both worlds, providing the flexibility of qualitative definitions while still giving certainty as to some offenses. Each hybrid statute strikes the balance a little differently, though. With only three specifically listed offenses, the ACCA skews toward flexibility and—much to the Supreme Court's chagrin—away from certainty. By contrast, a Louisiana hybrid statute includes within the definition of "crime of violence" more than fifty specific offenses, plus any other offense that has a specified type of physical force element or that involves the possession or use of a dangerous weapon.[44]

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[42] 18 U.S.C. § 924(e)(2)(B) (2012). Omitted language includes certain juvenile adjudications within the definition.

[43] 135 S. Ct. 2551, 2557 (2015).

[44] *See* LA. STAT. ANN. § 14:2(B) (2017).

D. FAULT LINES

Whether structured in qualitative, laundry list, or hybrid form, statutory definitions of "violent crime" differ substantially in their scope from jurisdiction to jurisdiction, and even sometimes from statute to statute within a single jurisdiction.[45] Although there are numerous specific offenses that appear in some definitions and not in others, most of the variation can be located along one of two fault lines. First, there is the question of intentionality, that is, whether an offense must include a conscious intent to injure in order to count as "violent," or whether it is enough that the offense conduct actually did injure or at least created a risk of injury (e.g., drug distribution, escape, carrying a concealed weapon). Second, there is the question of physicality, that is, whether the harm in view must be to a person's body—in the form of physical injury, or perhaps more broadly understood to include restraint of movement or sexual contact—or whether harm to a property interest suffices (e.g., larceny or expansive versions of burglary or extortion).

Some statutes seem, implicitly or explicitly, to adopt intentionality and physicality as necessary requirements for a crime to be considered "violent."[46] More commonly, however, statutes reflect a comparatively relaxed view as to one or both of the criteria, leading to correspondingly more expansive definitions of "violent crime."[47] Sweeping in offenses that lie beyond the core understanding of violent crime, these statutes raise concerns about fair notice and proportionality in punishment, as discussed in Part IV below.

II. OTHER DEFINITIONAL DIMENSIONS OF "VIOLENT CRIME"

In addition to the various competing approaches to defining what counts as "violent," there are several other important dimensions of variation as to what can trigger a CVC. One may again note statutes that seem surprisingly expansive.

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[45] *Compare* ARK. CODE ANN. § 5-42-203 (2017) (qualitative definition), *with* ARK. CODE ANN. § 5-4-501(d)(2) (laundry-list definition in different statute from same jurisdiction).

[46] *See, e.g.*, ARK. CODE ANN. § 5-42-203 (2017) (defining "crime of violence" as "any violation of Arkansas law if a person *purposely or knowingly* causes, or threatens to cause, *death or physical injury* to another person, specifically including rape" (emphasis added)).

[47] As Alice Ristroph has cautioned, "[T]he term 'violence' extends beyond actual bodily injury; it becomes an abstraction, and eventually that abstraction may become a repository for all we find repulsive, transgressive, or simply sufficiently annoying." Alice Ristroph, *Criminal Law in the Shadow of Violence*, 62 ALA. L. REV. 571 at 575 (2011).

A. OFFENSE SEVERITY: FELONY VERSUS MISDEMEANOR

While most CVCs require a felony-level offense, a sizeable minority can be triggered by just a misdemeanor. Sometimes this is made explicit in the CVC statute.[48] In other laws, it can be harder to tell whether and to what extent the law reaches misdemeanors. For instance, if a statute employs a laundry-list definition, some digging through the state's criminal code may be required to appreciate the full range of offense severities that are included. Ohio's definition of "offense of violence" provides a good illustration. The laundry-list portion of this hybrid definition includes references to no fewer than thirty-seven separate sections of the criminal code,[49] a few of which do describe misdemeanor offenses.[50] As to statutes with qualitative definitions, the full reach of the law may require judicial interpretation, but it does seem reasonably clear in many instances that misdemeanor-level violent crimes are intended to trigger the consequences at issue.[51]

The inclusion of misdemeanors in CVC statutes may raise a number of concerns. For instance, on the face of things, a statute that treats felonies and misdemeanors in an undifferentiated fashion may seem overbroad and insufficiently attentive to important differences in offense severity.

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[48] In several states, for instance, a person is statutorily barred from working as a driver in a transportation network (i.e., Uber and its competitors) after being convicted of a "misdemeanor violent offense." *See, e.g.*, MISS. CODE ANN. § 77-8-25(3)(b) (West, Westlaw through 2018 Reg. Sess. laws effective through June 29, 2018). Likewise, in several states, such a conviction will preclude a person from obtaining a permit for the concealed carrying of a firearm. *See, e.g.*, WYO. STAT. ANN. § 6-8-104 (West, Westlaw through all chapters effective May 1, 2018, Budget Session). Similarly, some sentence-enhancement statutes are expressly triggered by misdemeanor convictions that qualify as "violent." *See, e.g.*, IDAHO CODE § 18-3325(3) (West, Westlaw through all immediately effective legislation of the 2d Reg. Sess. of the 64th Legislature) ("Use of a conducted energy device during the commission of any of the following misdemeanor crimes of violence . . . shall result in double the penalties provided for in the Idaho Code regarding those crimes."). Other statutes are expressly structured so as to limit some opportunity, benefit, or protection only to individuals with a misdemeanor charge or conviction that is *nonviolent*. *See, e.g.*, KAN. STAT. ANN. § 22-2521(a) (West, Westlaw through June 7, 2018, Reg. Sess.) (restricting strip searches of individuals arrested for nonviolent misdemeanors).

[49] *See* OHIO REV. CODE ANN. § 2901.01(9)(a) (West, Westlaw through File 66 of the 132d G.A. (2017–18)).

[50] *See id.* at §§ 2903.22(B), 2917.03, 2917.31, 2921.04(A).

[51] Often, for instance, statutes will specify that a consequence follows from an arrest or conviction for a felony *or a crime of violence*. *See, e.g.*, FLA. STAT. § 985.04(4)(a) (West, Westlaw through 2018 2d Reg. Sess.) ("[W]hen a child of any age is taken into custody . . . for an offense that would have been a felony if committed by an adult, or a crime of violence, the law enforcement agency must notify the superintendent of schools . . . ."). If the term "crime of violence" were limited to felonies, of course, it would be an unnecessary redundancy to include it in such statutes.

Additionally, because we normally expect misdemeanor penalties to be relatively mild and short-term, there are more likely to be fair-notice problems with CVCs that are triggered by these lower-level offenses. Finally, as a matter of both legal doctrine and practical reality, the procedural safeguards for defendants tend to be far weaker in misdemeanor than felony cases.[52] The title of a critical report on misdemeanor case-processing in Florida is telling: "Three-Minute Justice."[53] This relative lack of due process in many misdemeanor cases might caution against attaching an extensive set of legal consequences to the resulting convictions.

B. OFFENDER AGE: ADULT CONVICTIONS VERSUS JUVENILE ADJUDICATIONS

In the United States, crimes by young people are normally handled through a juvenile court system that has distinctive procedures and methods of sanctioning.[54] Even a different terminology is used to describe outcomes: a youth found responsible for criminal conduct in the juvenile system is "adjudicated delinquent" instead of "convicted."[55] In general, the juvenile system is less formal and more oriented to offender rehabilitation than the adult system.[56] These differences have seemed appropriate in light of certain distinctive tendencies of young people. The pertinent research has been summarized this way:

> Youths differ from adults in risk perception, appreciation of consequences, impulsivity and self-control, sensation-seeking, and compliance with peers. The regions of the brain that control reward-seeking and emotional arousal develop earlier than do those that regulate executive functions and impulse control. Adolescents underestimate the amount and likelihood of risks, emphasize immediate outcomes, focus on anticipated gains rather than possible losses to a greater extent than adults, and consider fewer options. . . . Researchers attribute youths' impetuous decisions to a heightened appetite for emotional arousal and intense experiences, which peaks around 16 or 17.[57]

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[52] *See* Alexandra Natapoff, *Misdemeanors*, *in* 1 REFORMING CRIMINAL JUSTICE: INTRODUCTION AND CRIMINALIZATION 71, 72 (Erik Luna ed., 2017) ("[T]he misdemeanor world operates by its own peculiar and often disturbing rules. Enormous, fast, and highly informal, the system sweeps up and processes millions of people in ways that diverge wildly from traditional criminal justice ideals.").

[53] ALISA SMITH & SEAN MADDAN, NAT'L ASS'N CRIM. DEFENSE LAWYERS, THREE MINUTE JUSTICE: HASTE AND WASTE IN FLORIDA'S MISDEMEANOR COURTS (2011).

[54] See O'HEAR, *supra* note 22, at 135, 140

[55] *Id*. at 135.

[56] Judi McMullen, *Invisible Stripes: The Problem of Youth Criminal Records*, 27 S. CAL. REV. L. & SOC. JUST. 1, 9 (2018).

[57] Barry Feld, *Juvenile Justice*, *in* 1 REFORMING CRIMINAL JUSTICE: INTRODUCTION AND CRIMINALIZATION 329, 384–85 (Erik Luna ed., 2017).

Such tendencies have obvious implications for the blameworthiness, deterrability, and amenability to rehabilitation of juvenile offenders.[58]

Despite the "softer," more rehabilitative orientation of the criminal justice system toward juvenile crime as a general matter, *violent* juvenile crime can trigger quite different responses. As we will see below, juveniles facing violence charges may be transferred to the adult system, and, even if they remain in the juvenile system, are apt to encounter less favorable treatment there.[59] Even beyond these consequences, though, a sizeable number of CVC statutes treat violence *adjudications* on the same footing as violence *convictions*.[60] Thus, for instance, a violence adjudication can lead to categorical employment bars,[61] prohibitions on gun ownership,[62] and exclusion from opportunities for early release from prison.[63] A violence adjudication may also trigger a mandatory minimum sentence in a subsequent case[64] and lead to a person's inclusion on a violent offender registry.[65]

Using juvenile adjudications in these sorts of ways raises concerns that parallel those raised by the use of misdemeanors: important differences in offense severity are potentially disregarded; fair notice may be lacking; and the relative informality of juvenile courts may diminish the reliability of guilt determinations.[66] Even beyond these, there may also be additional concerns

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[58] *See* Graham v. Florida, 560 U.S. 48, 71–75 (2010) (concluding, based on distinctive characteristics of young people, that penological goals of retribution, deterrence, incapacitation, and rehabilitation cannot justify imposition of sentence of life without the possibility of parole for juveniles convicted of non-homicide offenses).

[59] *Infra* Part III.D.

[60] *See, e.g.*, TENN. CODE ANN. § 71-2-403(e) (West, Westlaw through May 21, 2018, 2d Reg. Sess.) ("Conviction by a criminal court *or adjudication by the juvenile court* for . . . an offense involving violence against any person . . . shall disqualify such [a] person from employment with, or from having any access whatsoever to adults in, an adult day care center . . . ." (emphasis added)).

[61] *See, e.g.*, S.D. CODIFIED LAWS § 23-3-42 (West, Westlaw through 2018 Reg. Sess. laws, March 23, 2018) (employment as law enforcement officer); TENN. CODE ANN. § 71-3-507(e)(1)(A)(i) (employment in childcare agency).

[62] *See, e.g.*, HAW. REV. STAT. ANN. § 134-7(d) (West, Westlaw through Act 23 of 2018 Reg. Sess.); MD. CODE ANN., PUB. SAFETY § 5-306(c)(2)(i) (West, Westlaw through legislation effective June 1, 2018, Reg. Sess.).

[63] MINN. STAT. ANN. § 244.0513(6) (West, Westlaw through June 18, 2018, Reg. Sess.) (early release for successful completion of drug treatment).

[64] LA. STAT. ANN. § 14:95.8(4) (West, Westlaw through the 2018 1st Extraordinary Sess.).

[65] IND. CODE § 11-8-2-13(b)(2) (West, Westlaw through 2018 Reg. Sess.); MONT. CODE ANN. § 41-5-1513(1)(c) (West, Westlaw through the 2017 Sess.).

[66] A particular reliability concern for juveniles is that their immature decision-making processes may leave them more likely than adults to plead guilty to crimes they did not

about subjecting a group of offenders as to whom rehabilitative hopes tend to be highest to long-term legal disadvantages that may hinder their ability to reintegrate as productive, law-abiding members of society.

C. CONSEQUENCES IN THE ABSENCE OF CONVICTIONS

Not all CVCs require a conviction. Juvenile adjudications are just one example of what may suffice in lieu of a conviction. Most notably, many legal consequences can be triggered by a mere charge for a violent offense. Typically, these consequences relate to the pre-conviction litigation process. These are detailed below in Part III.A. However, a violence charge can carry a variety of additional consequences. Some are only temporary over the time period that the case is pending. For instance, a Kentucky statute regulating residential psychiatric treatment centers mandates that "[a]ny employee or volunteer who . . . is charged with the commission of a violent offense . . . shall be *immediately* removed from contact with a child within the residential treatment center until the employee or volunteer is cleared of the charge."[67]

Other CVC statutes establish consequences of a more lasting nature. For instance, a Louisiana statute establishes a presumption against granting an explosives license based on a person's arrests or charges for a violent crime,[68] while an Arkansas statute provides for the denial or revocation of a polygraph examiner license on the basis of a violence arrest or indictment.[69] Meanwhile, an Arizona statute requires a probationary sentence for certain drug offenders *unless they have a prior indictment for a violent offense*.[70] Similarly, Louisiana has an expedited parole mechanism for certain prisoners, but requires additional process for those who initially faced a violence charge.[71]

A few CVC statutes can also be triggered by a finding of not guilty by reason of insanity.[72] And, in a similar spirit of expansiveness, some CVC

commit. Rebecca K. Helm *et al*., *Too Young to Plead? Risk, Rationality, and Plea Bargaining's Innocence Problem in Adolescents*, 24 PSYCHOL., PUB. POL'Y & L. 180 (2018).

[67] KY. REV. STAT. ANN. 216B.457(12)(a) (West, Westlaw through the end of 2018 Reg. Sess.) (emphasis added).

[68] LA. STAT. ANN. § 40:1472.3(E)(2)(o).

[69] ARK. CODE ANN. § 17-39-211(10) (West, Westlaw through laws effective June 14, 2018 in the 2018 Fiscal Sess. and 2d Extraordinary Sess.).

[70] ARIZ. REV. STAT. ANN. § 13-901.01 (West, Westlaw through the 2018 1st Spec. Sess., and legislation effective May 16, 2018 of the 2d Reg. Sess.).

[71] LA. STAT. ANN. § 15:574.2(4)(a)(ii) (West, Westlaw through the 2018 1st Extraordinary Sess.).

[72] *See, e.g.*, WIS. STAT. ANN. § 973.123(2) (2016) (imposing mandatory minimum prison term for armed violent felony if the defendant was previously convicted, adjudicated

statutes can be triggered even by convictions that have been formally sealed or expunged.[73]

D. AGE OF CONVICTIONS

Most CVC laws lack any sort of "statute of limitations" by which a person's old violent offenses would lose their legal effect after a period of time.[74] This may seem especially draconian with respect to juvenile adjudications—youthful missteps thereby carry lifetime consequences, even though the offense was not seen as so serious at the time as to warrant prosecution in an adult court.[75]

The minority of CVC laws that do contain time constraints incorporate varying limitations periods. At one extreme are a few CVCs that expire three years after the completion of the sentence.[76] At the other end of the scale are a set of CVCs that do not expire until ten years have elapsed from the conviction or sentence.[77]

The social science research suggests that a statute of limitations would be appropriate for violence convictions, and that the optimal length may be something less than a decade. As convictions age, they become progressively

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delinquent, *or found not guilty by reason of mental disease or defect* as to another violent felony).

[73] *See, e.g.*, ARK. CODE ANN. § 20-38-105(c)(3) (providing for permanent disqualification from employment in child care facility on basis of violent offense "whether or not the record of the offense is expunged, pardoned, or otherwise sealed").

[74] The lifetime impact of convictions is implicit in most CVC statutes, but is sometimes made express. *See, e.g.*, COLO. REV. STAT. § 27-90-111(9)(b) (2015) ("[A] person is disqualified from employment [by department of human services] either as a department employee or as an independent contractor, *regardless of the length of time that may have passed* since the discharge of the sentence imposed for any of the following criminal offenses: (I) A crime of violence . . . ." (emphasis added)).

[75] *See, e.g.*, MINN. STAT. ANN. § 260B.245(b) (West, Westlaw through June 18, 2018, Reg. Sess.) ("A person who was adjudicated delinquent for . . . a crime of violence . . . is not entitled to ship, transport, possess, or receive a firearm for the remainder of the person's lifetime.").

[76] These and the other time limits at the shorter end of the scale are almost all tied to misdemeanor convictions and serve to restore firearms-related rights to the covered misdemeanants. *See, e.g.*, FLA. STAT. § 790.06(3) (West, Westlaw through 2018 2d Reg. Sess.); MISS. CODE ANN. § 45-9-101(3) (West, Westlaw through 2018 Reg. Sess. laws effective through June 29, 2018); OR. REV. STAT. § 166.47(1) (West, Westlaw through 2018 Reg. Sess. emergency legislation).

[77] *See, e.g.*, MINN. STAT. ANN. § 244.0513(2)(6) (setting as condition for opportunity for early release from prison that "the offender has not within the past ten years been convicted or adjudicated delinquent for a violent crime . . . .").

less reliable predictors of future behavior.[78] For instance, one leading study found that the recidivism risk of a person who last offended six or seven years earlier is only a little higher than that of otherwise similar individuals who have no criminal record at all.[79] Slight differences in risk between two groups of people hardly seem a compelling justification for relegating one group to a third-class citizenship.

III. LEGAL CONSEQUENCES OF A "VIOLENT CRIME"

This Part presents a fifty-state survey of the legal consequences of a violence charge or conviction. The research strategy used here likely captured a large share of the nation's CVCs, although a few limitations should be noted. In particular, the search was limited to state statutory law. Thus, for instance, administrative regulations, local ordinances, and federal law were omitted, all of which may include CVCs of various sorts; recall, for instance, the ACCA as an example of a federal CVC. Also, not included in the discussion that follows are consequences attached to "sexual violence," "domestic violence," and "gang violence"; those are distinct, statutorily recognized offense categories in some states that present their own distinct problems of law and policy. Further methodological details and limitations are set forth in the footnotes.[80]

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[78] *See, e.g.*, Megan Kurlychek, Shawn Bushway & Robert Brame, *Long-Term Crime Desistance and Recidivism Patterns—Lessons from the Essex County Convicted Felon Study*, 50 CRIMINOLOGY 71, 96 (2012) ("Our starting point is the widespread understanding—based on decades of recidivism studies—that the risk of offending tends to decline with the passage of time since the last offense.").

[79] Megan Kurlychek & Shawn Bushway, *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending*, 5 CRIMINOLOGY & PUB. POL'Y 483, 483 (2006).

[80] Using the Westlaw database, the following terms and connectors search was conducted in the codified statutes of each of the fifty states: (!violen! or nonviolent) /2 (crime or offense or felony or misdemeanor). As indicated in the text, statutes dealing exclusively with "sexual violence" (or related terms like "sexually violent offender"), "domestic violence," or "gang violence" were disregarded. Additionally, I disregarded substantive offense definitions in which the word "violence" or "violent" appears as an element of the offense (e.g., disorderly conduct statutes that prohibit "violent" behavior); substantive offense definitions in which an intent to commit a violent crime appears as an element of the offense; legislative findings or declarations that have no legally operative effect; death penalty statutes that list prior violent convictions as an aggravating circumstance; statutes that apply only to a single county or other geographic subdivision of a state; statutes that establish limited pilot programs; court rules; special procedures for violent crime cases that do not clearly create a disadvantage for the defendant; statutes that create CVCs only with respect to cases with a child victim; and victim rights and compensation statutes. Note also that the search was not designed to identify statutes creating consequences for a "forcible felony," a "crime against the person," a "serious felony," or an "act of violence," although these terms are sometimes used in ways that seem roughly synonymous with "violent crime."

Even with these limitations, the survey makes clear that individuals with charges or convictions for "violent crimes" are subject to a large number and wide diversity of legal consequences, with about 600 CVCs cited and categorized in this Part. These CVCs affect all stages of the criminal process: pre-conviction, sentencing, and corrections. There are also a number of CVCs that apply specifically to juvenile offenders, and many that operate outside the criminal justice system entirely. By way of overview, the table on the next two pages indicates which states have at least one CVC in each of fifteen categories. These categories correspond to the subsections of this Part.

Table 1. States with at least one CVC in each category.

	Pretrial Release	Pretrial Diversion	Other Pre-conviction	Sentencing Alternatives to Incarceration	Sentence Enhancements	Other Sentencing	Release from Prison
AL		X					
AK							
AZ	X			X	X		X
AR		X			X	X	X
CA	X	X	X	X	X		X
CO	X			X	X	X	X
CT							X
DE	X	X	X	X	X	X	
FL		X	X	X	X		
GA	X		X	X	X	X	X
HI	X		X	X	X	X	
ID		X			X		
IL		X		X			X
IN		X		X	X	X	X
IA							
KS			X				
KY				X			X
LA	X	X	X	X	X	X	X
ME							
MD	X	X	X	X	X		X
MA	X				X		
MI					X		X
MN			X		X	X	X
MS		X		X	X		X
MO				X			X
MT			X	X	X	X	X
NE			X	X			
NV		X					

	Pretrial Release	Pretrial Diversion	Other Pre-conviction	Sentencing Alternatives to Incarceration	Sentence Enhancements	Other Sentencing	Release from Prison
NH	X						X
NJ		X					
NM		X	X		X		X
NY		X	X	X	X	X	X
NC			X		X	X	X
ND							
OH		X			X	X	
OK	X						
OR							
PA					X		
RI		X		X			
SC		X					X
SD				X			
TN				X	X	X	
TX	X	X					X
UT					X		
VT		X			X	X	
VA		X		X	X	X	X
WA	X	X	X	X		X	X
WV		X		X	X		X
WI	X				X		
WY				X	X		

Table 1 (continued). States with at least one CVC in each category

	Community Supervision	Other Corrections	Juvenile Specific	Work	Privacy & Stigma	Parenting	Guns & Related Items	Other Collateral
AL			X	X				
AK								
AZ	X		X	X				
AR	X			X	X	X	X	
CA	X	X	X	X	X	X	X	X
CO	X	X	X	X	X			
CT				X	X			
DE			X	X	X			
FL	X		X	X	X	X	X	X
GA			X	X			X	X
HI					X		X	
ID					X			
IL			X	X	X	X		
IN	X	X		X	X			
IA								
KS								
KY	X			X	X			
LA	X	X	X	X	X	X	X	
ME		X		X				X
MD	X			X	X	X	X	
MA				X			X	
MI	X						X	
MN	X			X	X	X	X	
MS				X	X		X	
MO			X				X	
MT					X	X		
NE							X	
NV				X	X			
NH	X		X	X	X			
NJ								
NM				X			X	

	Community Supervision	Other Corrections	Juvenile Specific	Work	Privacy & Stigma	Parenting	Guns & Related Items	Other Collateral
NY	X		X	X	X	X		
NC				X	X		X	
ND						X	X	
OH				X			X	
OK				X	X	X		X
OR							X	
PA	X			X				
RI					X		X	
SC	X	X		X	X		X	
SD				X				
TN				X	X		X	X
TX		X	X					X
UT				X			X	
VT	X	X		X		X		
VA			X	X	X			
WA	X	X	X	X	X		X	X
WV		X	X	X				
WI					X		X	
WY			X		X		X	

A. PRE-CONVICTION CVCS

1. Pretrial Release

In more than a dozen states, statutes make it categorically harder for violent offenders to obtain pretrial release and remain in the community while they wait for their cases to be resolved.[81] Several different mechanisms are utilized. For instance, some states require that special procedures be followed or standards applied before a violent offender can be released on his or her own recognizance (i.e., without having to put up cash bail).[82]

[81] The states are identified in the first column of the table, *see supra* Table 1. The specific statutes are cited in the remaining footnotes of this section.

[82] *See* CAL. PENAL CODE § 1319(a) (West, Westlaw through Ch. 13 of 2018 Reg. Sess.):

> No person arrested for a violent felony . . . may be released on his or her own recognizance until a hearing is held in open court before the magistrate or judge, and until the prosecuting attorney is given notice and a reasonable opportunity to be heard on the matter.

Moreover, when money is required for release, a few states mandate that the judicial officer who determines the amount must take into account whether the defendant is facing a current violence charge (or, in one state,[83] has ever merely been arrested for a violent felony).[84] In ten states, a violence charge or conviction, in conjunction with other factors, may cause a defendant to be held under a preventive detention law without access to bail release at any dollar amount.[85] Meanwhile, in two states, a defendant facing a violence

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Id. See also § 1319(b):

> A defendant charged with a violent felony . . . shall not be released on his or her own recognizance where it appears, by clear and convincing evidence, that he or she previously has been charged with a felony offense and has willfully and without excuse from the court failed to appear in court as required while that charge was pending.

Id. See also DEL. CODE ANN. tit. 11, § 2107(c) (West, Westlaw through 81 Laws 2018, Chs. 200-262) ("[F]or a defendant charged with committing a violent felony involving a firearm or with committing a violent felony while on probation or pretrial release, the presumption is that a conditions of release bond guaranteed by financial terms secured by cash only will be set." (effective Jan. 1, 2019)); GA. CODE ANN. § 17-6-12(a)-(b) (West, Westlaw through 2018 Act 562) (defining "bail restricted offense" to include, *inter alia*, a "serious violent felony" and imposing special procedural requirements before person charged with such offense can be released on own recognizance); LA. CODE CRIM. PROC. ANN. art. 321(C) (West, Westlaw through the 2018 1st Extraordinary Sess.) ("Any defendant who has been arrested for any of the following offenses shall not be released on his personal undertaking or with an unsecured personal surety . . . (1) A crime of violence . . . ."); TEX. CODE CRIM. PROC. ANN. art. 17.032 (West, Westlaw through the 2017 Reg. and First Called Sessions of the 85th Legis.) (establishing presumption that certain defendants with mental illness or intellectual disability will be released on personal bond, but only if "the defendant is not charged with and has not been previously convicted of a violent offense"); WASH. REV. CODE § 10.19.170 (West, Westlaw through all effective legislation of 2018 Reg. Sess.) (mandating on-the-record explanation when defendant arrested or charged with violent offense released on personal recognizance); § 10.21.015(2):

> A pretrial release program may not agree to supervise, or accept into its custody, an offender who is currently awaiting trial for a violent offense . . . who has been convicted of one or more violent offenses . . . in the ten years before the date of the current offense, unless the offender's release before trial was secured with a payment of bail.

Id.

[83] ARIZ. REV. STAT. ANN. § 13-3967(B) (West, Westlaw through the 2018 1st Special Sess., and legislation effective May 16, 2018 of the 2d Reg. Sess.) (requiring judicial officer to take into account whether accused has prior arrest or conviction for violent felony).

[84] *See, e.g.*, CAL. PENAL CODE § 1275(c) ("Before a court reduces bail to below the amount established by the bail schedule . . . for a person charged with . . . a violent felony . . . , the court shall make a finding of unusual circumstances and shall set forth those facts on the record.").

[85] *See* ARIZ. REV. STAT. ANN. § 13-3961(D) (prohibiting bail if court finds "clear and convincing evidence that the person . . . engaged in conduct constituting a violent offense" and other factors are present); COLO. REV. STAT. § 16-4-101(1) (2015) (mandating that "[a]ll persons shall be bailable" except if violent crime has been charged and certain other

charge loses the ability to regain pretrial release if he or she engages in certain forms of (not necessarily violent) misconduct while out on bail.[86] Finally, one state generally precludes pretrial release in any pretrial program for defendants who have had a violent felony conviction in the past ten years.[87]

2. Pretrial Diversion

In about two dozen states, a current violence charge or a prior conviction for a violent offense will categorically disqualify a defendant from at least one pretrial diversion program.[88] Such programs offer defendants an opportunity to avoid incarceration and often even a conviction. The

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circumstances present); GA. CODE ANN. § 17-6-1 (establishing rebuttable presumption for detention if defendant "charged with a serious violent felony and has already been convicted of a serious violent felony"); HAW. REV. STAT. ANN. § 804-3(c) (West, Westlaw through Act 23 of 2018 Reg. Sess.) (establishing rebuttable presumption for detention if defendant has prior conviction of "serious crime involving violence against a person" in past ten years, or is already on bail, probation, or parole for such an offense); MASS. GEN. LAWS ANN. ch. 276, § 58A(1) (West, Westlaw through Ch. 108 of the 2018 2d Annual Sess.) (authorizing pretrial detention for defendant who was convicted of a violent crime if certain other conditions satisfied); MD. CODE ANN., CRIM. PROC. § 5-202(c)(3) (West, Westlaw through legislation effective June 1, 2018, from the 2018 Reg. Sess.) (establishing rebuttable presumption for detention if defendant charged with crime of violence and has prior conviction for crime of violence); N.H. REV. STAT. ANN. § 597:1-d (I) (West, Westlaw through Ch. 159 of the 2018 Reg. Sess.) (establishing presumption against bail if probable cause to believe that defendant committed a specified crime while "on probation or parole for a conviction of a violent crime"); OKLA. STAT. ANN. tit. 22, § 1101(C) (West, Westlaw through 1st Reg. Sess., 1st Extraordinary Sess. and Ch. 17 of the 2d Extraordinary Sess.) ("All persons shall be bailable by sufficient sureties, except that bail may be denied for 2. Violent offenses . . . ."); WASH. REV. CODE § 10.21.050 ("The judicial officer must, in determining whether there are conditions of release that will reasonably assure the safety of any other person and the community, take into account . . . (1) . . . whether the offense is a crime of violence . . . ."); WIS. STAT. ANN. § 969.035(2)(b) (2016) (authorizing pretrial detention of "person accused of committing or attempting to commit a violent crime [if] the person has a previous conviction for committing or attempting to commit a violent crime").

[86] *See* DEL. CODE ANN. tit. 11, § 2116(b) (requiring revocation of bail if person charged with violent felony committed another offense during period of release); LA. CODE CRIM. PROC. ANN. art. 312(B):

> A person released on a previously posted bail undertaking for . . . a crime of violence . . . which carries a minimum mandatory sentence of imprisonment upon conviction . . . shall not be readmitted to bail when the person previously failed to appear and a warrant for arrest was issued and not recalled or the previous bail undertaking has been revoked or forfeited.

Id.

[87] OKLA. STAT. ANN. tit. 22, § 1105.3(C)(4) (West, Westlaw through 1st Reg. Sess., 1st Extraordinary Sess. and Ch. 17 of the 2d Extraordinary Sess.).

[88] The states are identified in the second column of the table *supra* Table 1. The specific statutes are cited in the remaining footnotes of this section.

programs typically require the defendant to enter into some form of rehabilitative treatment or specialized supervision in return for the suspension of regular criminal proceedings.[89]

For instance, a violent crime can affect eligibility for a drug treatment court (DTC). These courts provide an alternative to conventional case-processing for drug-involved defendants.[90] If admitted to a DTC, the defendant receives drug treatment in the community under court supervision. Not all participants have success,[91] but, for many, the DTC provides a beneficial structure for treatment, leading to lower levels of drug use, recidivism, and incarceration. For instance, recent research indicates that the recidivism rates of DTC participants are about 7.5 to 14% lower than those of similar defendants who are not in a DTC.[92] In short, for some defendants, disqualification from a DTC can be a major disadvantage. Yet, despite the ability of DTCs to support desistance from drug use and crime, ten states preclude DTC entry for violent offenders.[93]

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[89] *See, e.g.*, Jonathan P. Caulkins & Mark A. R. Kleiman, *Drugs and Crime, in* OXFORD HANDBOOK OF CRIME AND CRIMINAL JUSTICE 275, 301 (Michael Tonry, ed. 2011) ("Drug-diversion programs . . . involve offering drug users arrested either for drug possession or for non-drug crimes the opportunity to avoid a fail or prison sentence in return for agreeing to enter, and remain in, drug treatment.").

[90] O'HEAR, *supra* note 22, at 27.

[91] *Id*. at 33.

[92] *Id*. at 34.

[93] Nine states disqualify on the basis of a current violence charge. *See* ALA. CODE § 12-23A-5(i)(1) (West, Westlaw through Act 2018-579); ARK. CODE ANN. § 16-98-303(c)(1)(A) (West, Westlaw through laws effective June 14, 2018 in the 2018 Fiscal Sess. and 2d Extraordinary Sess.); FLA. STAT. § 948.08 (West, Westlaw through the 2018 2d Reg. Sess.); IDAHO CODE § 19-5604(2)(a) (West, Westlaw through all immediately effective legislation of the 2d Reg. Sess. of the 64th Legis.); 730 ILL. COMP. STAT. 166/20(b)(1) (West, Westlaw through P.A. 100-590, with the exception of P.A. 100-586, of the 2018 Reg. Sess.); MISS. CODE ANN. § 9-23-15(1)(b)-(c) (West, Westlaw through laws from the 2018 Reg. Sess. effective through June 29, 2018); 8 R.I. GEN. LAWS § 8-2-39.2(d)(2) (West, Westlaw through Ch. 30 of the Jan. 2018 Sess.); S.C. CODE ANN. § 16-1-130(A)(1) (West, Westlaw through 2018 Act No. 177); W. VA. CODE § 62-15-6(a)(1) (West, Westlaw through legislation of the 2018 Reg. Sess.). A mostly overlapping set of nine states disqualify on the basis of a prior violence conviction. *See* ALA. CODE § 12-23A-5(i)(2); ARK. CODE ANN. § 16-98-303(c)(1)(B); IDAHO CODE § 19-5604(2)(a); 730 ILL. COMP. STAT. 166/20(b)(4); MISS. CODE ANN. § 9-23-15(1)(a); 8 R.I. GEN. LAWS § 8-2-39.2(d)(2); S.C. CODE ANN. § 16-1-130(A)(2); VA. CODE ANN. § 18.2-254.1(H) (West, Westlaw through legislation of the 2018 Reg. Sess.); W. VA. CODE § 62-15-6(a)(3). This does not include states that offer grants to support locally operated DTCs but condition the money on the exclusion of violent offenders—a less direct approach to try to keep violent offenders out of the treatment courts. *See, e.g.*, WIS. STAT. ANN. § 165.95(3)(c) (2016).

To be sure, a DTC is not the only way of structuring a diversion for drug treatment, but other programs also often include statutory exclusions for violent offenders. *See* CAL. PENAL CODE § 1000(a)(2) (West, Westlaw through Ch. 13 of 2018 Reg. Sess.); 20 ILL. COMP. STAT.

The success of DTCs has inspired a proliferation of other sorts of specialized "problem-solving" or "therapeutic" courts.[94] However, violence exclusions are also common among these courts. For instance, five states exclude violent offenders from their specialized mental health courts,[95] while three states exclude violent offenders from their veterans' courts.[96] Another state, Washington, more broadly excludes from *all* therapeutic courts those defendants "who are currently charged or who have been previously convicted of a serious violent offense," absent "special findings" by the court.[97]

State laws authorize a wide range of other kinds of diversion programs, with the terminology and structural details varying considerably from jurisdiction to jurisdiction. Across all of this diversity, though, violence exclusions remain a common theme.[98]

301/40-5; LA. CODE CRIM. PROC. ANN. art. 903.1 (West, Westlaw through the 2018 1st Extraordinary Sess.); MD. CODE ANN., CRIM. PROC. § 6-229 (West, Westlaw through legislation effective June 1, 2018, from the 2018 Reg. Sess.); TEX. CODE CRIM. PROC. ANN. art. 16.23 (West, Westlaw through the 2017 Reg. and First Called Sessions of the 85th Legis.).

[94] O'HEAR, *supra* note 22, at 57–58.

[95] ARK. CODE ANN. § 16-100-205; FLA. STAT. § 948.01(8)(a); 730 ILL. COMP. STAT. 168/20(b)(1); LA. STAT. ANN. § 13:5355(B)(2)(f) (West, Westlaw through the 2018 1st Extraordinary Sess.); S.C. CODE ANN. § 16-1-130(A). A growing body of research finds that mental health courts have had success in reducing recidivism and violence rates. *See* Lauren Gonzalez & Dale E. McNiel, *Can Reduced Homelessness Help to Explain Public Safety Benefits of Mental Health Court?*, 24 PSYCHOL., PUB. POL'Y & L. 271, 271 (2018).

[96] 730 ILL. COMP. STAT. 167/20(b); MISS. CODE ANN. § 9-25-1(e); N.J. STAT. ANN. 2C:43-26(2) (West, Westlaw through L. 2018, c. 23 and J.R. No. 5).

[97] WASH. REV. CODE § 2.30.030(3)(a) (West, Westlaw through all effective legislation of 2018 Reg. Sess.).

[98] *See* ARK. CODE ANN. § 5-4-904(b)(2)(B) (excluding from pre-adjudication probation defendants charged with a violent felony); DEL. CODE ANN. tit. 11, § 4218(c)(1)(b) (West, Westlaw through 81 Laws 2018, chs. 200-262) (excluding from "probation before judgment" certain defendants based on prior conviction of violent felony); FLA. STAT. § 948.08(2) (excluding from pretrial intervention program defendants who have a prior violent misdemeanor conviction); 730 ILL. COMP. STAT. 5/5-6-3.3(a-2) (excluding from offender initiative program defendants charged with violent offense); 730 ILL. COMP. STAT. 5/5-6-3.6(b) (excluding from First Time Weapon Offender Program defendants whose offense was committed during commission of violent offense or who have prior conviction, conditional discharge, or juvenile delinquency adjudication for a violent offense); IND. CODE § 11-12-3.7-11(a)(2)(A), (3) (West, Westlaw through 2018 Reg. Sess.) (excluding from preconviction forensic diversion program defendants who are either charged with violent offense or who have conviction in past ten years for violent offense); LA. STAT. ANN. § 13:5401(B)(1)(f), (h) (excluding from workforce development sentencing program defendants charged with a crime of violence); § 15:571.44(F) (same for job intervention program); MISS. CODE ANN. § 99-15-26(1)(a) (empowering court generally to withhold acceptance of guilty plea "pending successful completion of such conditions as may be imposed by the court," but excluding cases of violent crime); § 99-15-107(A) (excluding from pretrial intervention program

3. Other Preconviction CVCs

Even beyond affecting the possibility of pretrial release and diversion, a current violence charge or past violence conviction can carry a variety of other preconviction consequences for defendants. In six states, for instance, there are special rules for violent offenders who are found incompetent to stand trial.[99] Other CVCs eliminate affirmative defenses[100] or permit prosecutors to avoid the normal consequences of their own neglect.[101] In Kansas, individuals arrested for a misdemeanor normally have statutory protections against strip searches, but only if the misdemeanor was nonviolent.[102] In New York, there are special restrictions on the extent to

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defendants charged with violent crime); N.M. STAT. ANN. § 31-16A-4(A)(1) (West, Westlaw through May 16, 2018 of the 2d Reg. Sess.) (excluding from diversion program defendants with prior conviction for violent felony); N.Y. CRIM. PROC. LAW § 215.10 (McKinney through L. 2018, Chs. 1 to 72) (excluding cases from possibility of dispute resolution referral if defendant charged with violent felony); OHIO REV. CODE ANN. § 2935.36(A)(2) (West, Westlaw through File 66 of the 132d G.A. (2017–18)) (excluding from pretrial diversion programs individuals accused of violent offense); S.C. CODE ANN. § 17-22-50 (excluding from pretrial intervention program defendants charged with violent crime); VT. STAT. ANN. tit. 3, § 164(a) (West, Westlaw through Acts of the Adjourned Session of the Vt. G.A. effective through May 25, 2018) (authorizing diversion project "designed to assist adults who have been charged with a first or second misdemeanor or a first *nonviolent* felony" (emphasis added)); VA. CODE ANN. § 18.2-57.3(B)(iii) (excluding defendants with prior violence conviction from domestic violence diversion program unless prosecutor does not object); A.B. 470 § 2(2)(a)(1), 2017 Leg., 79th Reg. Sess. (Nev. 2017) (excluding from diversion program defendants charged with violent misdemeanor).

[99] *See* FLA. STAT. § 916.145(1) (West, Westlaw through the 2018 2d Reg. Sess.) (establishing longer waiting period before dismissal of current charge if incompetent defendant has prior violent felony conviction); GA. CODE ANN. § 17-7-130(c) (West, Westlaw through 2018 Act 562) (establishing longer potential period of civil commitment if incompetent defendant charged with violent offense); HAW. REV. STAT. ANN. § 704-406 (West, Westlaw through Act 23 of 2018 Reg. Sess.) (capping length of potential institutionalization for incompetent defendant only if charge was for *nonviolent* misdemeanor); MD. CODE ANN., CRIM. PROC. § 3-107(a) (West, Westlaw through legislation effective June 1, 2018, from the 2018 Reg. Sess.) (establishing longer waiting period before dismissal of charge if charge was for felony or violent crime); N.C. GEN. STAT. ANN. § 15A-1003 (West, Westlaw through the end of the 2017 Reg. Sess.) (requiring, if incompetent defendant was charged with violent crime and ordered committed, that law-enforcement officer "take the defendant directly to a 24-hour facility").

[100] *See* CAL. PENAL CODE § 236.23(a) (West, Westlaw through Ch. 13 of 2018 Reg. Sess.) (human trafficking not defense to violent crime); N.M. STAT. ANN. § 30-1-8(I) (no statute of limitations for first degree violent felony).

[101] *See* CAL. PENAL CODE § 1387.1(a) (providing state with additional opportunity to refile violence charge dismissed based on excusable neglect by prosecution).

[102] KAN. STAT. ANN. § 22-2521(a) (West, Westlaw through June 7, 2018 Reg. Sess.). Washington has a similar rule. *See* WASH. REV. CODE § 10.79.130(2)(a) (West, Westlaw through all effective legislation of 2018 Reg. Sess.).

which violence charges can be reduced through plea bargaining.[103] A number of other CVCs affect pretrial processes.[104] And, even at trial, the rules of evidence can be different when violence is charged, with prosecutors permitted in several states to use certain kinds of hearsay or other evidence that would otherwise be excluded.[105]

B. SENTENCING-RELATED CVCS

1. Alternatives to Conventional Incarceration

In about two dozen states, violent offenders are categorically excluded from one or more sentencing alternatives to conventional incarceration.[106] For instance, in five states, violent offenders cannot be sentenced to home detention (house arrest).[107] In three, violent offenders are excluded from community service.[108] In nine, violent offenders cannot take advantage of

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[103] N.Y. CRIM. PROC. LAW § 220.10(d) (McKinney through L.2019, chs 1–19).

[104] *See, e.g.*, CAL. PENAL CODE § 813(e)(1) (prohibiting prosecutor from requesting summons in lieu of arrest warrant to bring suspect before court in cases of violent crime); .LA. CODE CRIM. PROC. ANN. art. 320(D) (West, Westlaw through the 2018 1st Extraordinary Sess.) (requiring drug test of individuals arrested for crime of violence);

[105] *See* DEL. CODE ANN. tit. 11, § 3516(a) (West, Westlaw through 81 Laws 2018 chs. 200–262) (out-of-court statements made by impaired adult or patient or resident of a state facility); MD. CODE ANN., CTS. & JUD. PROC. § 10-901 (West, Westlaw through legislation effective June 1, 2018 from the 2018 Reg. Sess.) (statements from declarant who is unavailable due to wrongdoing); MINN. STAT. ANN. § 595.02, subdiv. 4(a)(2) (West, Westlaw through June 18, 2018 Reg. Sess.) (out-of-court testimony from child); MONT. CODE ANN. § 46-16-221 (West, Westlaw through the 2017 Sess.) (out-of-court statements made by person with developmental disability); § 46-16-220(1) (out-of-court statements made by child); NEB. REV. STAT. § 27-505(3)(a) (West, Westlaw through legislation effective April 24, 2018 2d Reg. Sess.) (providing that husband-wife privilege may not be claimed in "criminal case where the crime charged is a crime of violence . . . committed by one against the person or property of the other or of a child of either"); WASH. REV. CODE § 9.73.210(4)(c) (recognizing exception to general rule against use of intercepted communications in certain prosecutions for serious violent offense); § 9A.44.150(a) (out-of-court testimony from child). Additionally, Maryland's prosecutors have a special right to appeal adverse evidentiary rulings in cases involving a crime of violence. MD. CODE ANN., CTS. & JUD. PROC. § 12-302(c)(4)(i).

[106] The states are identified in the fourth column of the table *supra*; the specific statutes are cited in the remaining footnotes of this section.

[107] *See* COLO. REV. STAT. § 17-27.8-101(1) (2015); DEL. CODE ANN. tit. 11, § 4391(3) (West, Westlaw through 81 Laws 2018 chs. 200–262); KY. REV. STAT. ANN. § 532.210(1) (West, Westlaw through the end of 2018 Reg. Sess.); MONT. CODE ANN. § 46-18-1004 (West, Westlaw through the 2017 Sess.); WASH. REV. CODE ANN. § 9.94A.734(1)(a) (West, Westlaw through all effective legislation of 2018 Reg. Sess.).

[108] *See* COLO. REV. STAT. § 18-1.3-302(2)(a); MD. CODE ANN., CORR. SERVS. § 8-703 (West, Westlaw through legislation effective June 1, 2018 Reg. Sess.); MISS. CODE ANN. § 99-20-5 (West, Westlaw through 2018 Reg. Sess. laws effective through June 29, 2018).

particular sentencing options involving a drug treatment component.[109] In three, violent offenders are excluded from particular sentencing options involving a work or job training component.[110] Many additional sentencing alternatives in other states are subject to similar limitations.[111]

Probation, in the form of either a suspended or deferred sentence, is the most basic alternative to incarceration, and, in several states, a current or past conviction of a crime categorized as violent can limit a defendant's eligibility

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[109] *See* ARIZ. REV. STAT. ANN. § 13-901.01(B) (West, Westlaw through the 2018 1st Special Sess. and legislation effective May 16, 2018 of the 2d Reg. Sess.) (probation with mandatory drug treatment defendant); CAL. PENAL CODE § 1174.4(a)(2)(R) (West, Westlaw through ch. 13 of 2018 Reg. Sess.) (program for female defendants with drug problems who are either pregnant or parenting young children); COLO. REV. STAT. § 18-1.3-103.5(4)(a) (probation option in which felony drug conviction can be reduced to misdemeanor); HAW. REV. STAT. ANN. § 706-622.5(1)(a) (West, Westlaw through Act 23 of 2018 Reg. Sess.) (probation with treatment); IND. CODE § 11-12-3.7-4(4) (West, Westlaw through 2018 Reg. Sess.) (forensic diversion program); LA. STAT. ANN. § 13:5304(B)(10)(b)-(c) (West, Westlaw through 2018 1st Extraordinary Sess.) (drug division probation program); MO. ANN. STAT. § 559.115(4) (West, Westlaw through emergency legislation approved June 1, 2018 2d Reg. Sess.) ("If the offender is convicted of a class C, class D, or class E *nonviolent* felony, the court may order probation while awaiting appointment to treatment." (emphasis added)); WASH. REV. CODE ANN. § 9.94A.660(1)(c) (drug offender sentencing alternative); W. VA. CODE § 62-15-6a(a) (West, Westlaw through legislation of 2018 Reg. Sess.) (treatment supervision). In at least two other states, a violent offense is a statutory factor that militates against, but does not categorically bar, a treatment-based alternative. *See* FLA. STAT. § 921.0026(2) (West, Westlaw through 2018 2d Reg. Sess.) (downward sentencing departure for assignment to drug court); WYO. STAT. ANN. § 7-13-1304 (West, Westlaw through all chapters effective May 1, 2018 Budget Session) (probation with treatment).

[110] *See* GA. CODE ANN. § 17-10-1(g)(4) (West, Westlaw through 2018 Act 562) (work release program); 730 ILL. COMP. STAT. 170/15 (West, Westlaw through P.A. 100-590, with the exception of P.A. 100-586, of the 2018 Reg. Sess.) (job training program); NEB. REV. STAT. § 83-4, 143 (West, Westlaw through legislation effective April 24, 2018 2d Reg. Sess.) (work camp).

[111] *See* CAL. PENAL CODE § 6228 (restitution center); MISS. CODE ANN. § 47-5-1003 (intensive supervision); § 99-37-19 (restitution center); N.Y. CRIM. PROC. LAW § 410.91(2) (McKinney through L.2019, chs. 1–19)) (parole); 42 R.I. GEN. LAWS ANN. § 42-56-20.2(a)(3)(i) (West, Westlaw through ch. 30 of Jan. 2018 Sess.) (community confinement); TENN. CODE ANN. § 40-36-106(a)(1)(C), (F) (West, Westlaw through May 21, 2018 2d Reg. Sess.) (community-based alternatives to incarceration); WASH. REV. CODE ANN. § 9.94A.655(1)(b) (parent sentencing alternative); § 9.94A.670(2)(c) (sex-offender sentencing alternative). In Montana, only when it comes to *nonviolent* felony offenders is the sentencing judge mandated "first [to] consider alternatives to imprisonment of the offender in a state prison." MONT. CODE ANN. § 46-18-225(1). Likewise, Washington law mandates, "For sentences of *nonviolent* offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used." § 9.94A.680 (emphasis added).

for a probationary sentence.[112] This is structured a bit differently from jurisdiction to jurisdiction. For instance, Kentucky and Louisiana generally ban probation for violent offenders.[113] California prohibits probation for defendants convicted of a violent felony who were already on probation at the time of the violent offense.[114] In Illinois, the law encourages probationary sentences for certain felonies, *unless the defendant has a prior conviction for a violent crime*.[115] Illinois also excludes violent offenders from "second chance probation," which offers the possibility of dismissal of the underlying charge if probation is successfully completed.[116] Similar laws can also be found elsewhere.[117] Of course, the most direct and common way for a legislature to preclude probation is by requiring a mandatory minimum prison term; many such minimums for violent offenders are noted in the next subsection.

In addition to community-based alternatives, several states also offer the option of intensive, "boot-camp" incarceration.[118] Such programs involve relatively short periods of incarceration and also often include drug counseling and other rehabilitative programming.[119] However, the governing statutes in six states categorically exclude violent offenders from boot-camp sentences.[120]

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[112] *See, e.g.*, KY. REV. STAT. ANN. § 532.047 (generally prohibiting probation for violent offenses).

[113] KY. REV. STAT. ANN. § 532.047; LA. CODE CRIM. PROC. ANN. art. 893(A)(b)(2) (West, Westlaw through the 2018 1st Extraordinary Sess.). The Louisiana statute recognizes an exception for certain first-time offenses.

[114] CAL. PENAL CODE § 1203(k).

[115] *See* 730 ILL. COMP. STAT. 5/5-4-1(b-1).

[116] *See id.* at 5/5-6-3.4(a-1).

[117] For instance, Georgia excludes "serious violent offenders" from a program similar to Illinois's. GA. CODE ANN. §§ 17-10-6.1(b)(3), 42-8-60(i)(1) (West, Westlaw through 2018 Act 562). For other examples of restrictions on probation, see ARIZ. REV. STAT. ANN. § 41-1604.15 (West, Westlaw through the 2018 1st Special Sess. and legislation effective May 16, 2018 of the 2d Reg. Sess.) (precluding probation for defendants convicted of violent crime committed under the influence of drugs); S.D. CODIFIED LAWS § 23A-27-12 (West, Westlaw through 2018 Reg. Sess. laws, March 23, 2018) (precluding probation for second or subsequent conviction for violent crime).

[118] O'HEAR, *supra* note 22, at 49–50 (2018) (describing development and spread of boot camp concept).

[119] SAMUEL WALKER, SENSE AND NON-SENSE ABOUT CRIME, DRUGS, AND COMMUNITIES 267–68 (7th ed. 2011).

[120] *See* COLO. REV. STAT. § 17-27.7-103(1) (2015); DEL. CODE ANN. tit. 11, § 6705(b)(2)-(3) (West, Westlaw through 81 Laws 2018 chs. 200–262); N.Y. CORRECT. LAW § 865(1) (McKinney through L.2019, chs. 1–19); 12 R.I. GEN. LAWS ANN. § 12-19-2.2(d)(1) (West, Westlaw through ch. 30 of Jan. 2018 Sess.); VA. CODE ANN. § 19.2-316.1 (West, Westlaw

2. Sentence Enhancements

Enhancement statutes increase the otherwise-applicable sentencing range for an offense by mandating a certain *minimum* term of imprisonment, increasing the *maximum* potential term that can be selected by the sentencing judge, or both.[121] More than two dozen states have adopted enhancement statutes that are in some sense triggered by "violent" offenses.[122]

Recidivism statutes, which base the enhancement on a defendant's prior conviction (or, in some instances, convictions), are the most common. For instance, in New York, a felony drug offender with a prior felony conviction faces higher minimum and maximum terms if the prior was classified as violent.[123] Similarly, several states enhance sentences for particular weapons offenses if the defendant has a prior violence conviction.[124] A variety of

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through legislation of the 2018 Reg. Sess.); WASH. REV. CODE ANN. § 9.94A.690(1)(a)(ii) (West, Westlaw through all effective legislation of 2018 Reg. Sess.).

[121] The maximum can be increased directly or indirectly. The maximum is increased indirectly if the enhancement statute creates a separate offense for committing a predicate violent offense in a particular way or in particular circumstances. The overall sentencing exposure is increased if the new offense has a higher maximum than the predicate, or if its existence creates opportunities for prosecutors to obtain two convictions based on the same underlying criminal conduct with sentences that can be ordered to run consecutively.

[122] The states are identified in the fifth column of Table 1 *supra*; the specific statutes are cited in the remaining footnotes of this section.

[123] The precise sentencing impact of the prior violent felony depends on the severity of the current drug conviction. For instance, if the current conviction is for a class B felony, then a prior violent felony results in a sentencing range of between six and fifteen years. N.Y. PENAL LAW § 70.70(4)(b)(i) (McKinney through L.2019, chs. 1–19). By contrast, if the prior felony was nonviolent, then the applicable range would be only two to twelve years. § 70.70(3)(b)(i). Additionally, if the prior felony was nonviolent, the sentencing judge would be permitted to impose a sentence of probation or parole supervision. § 70.70(3)(c)-(d).

[124] In three states, for instance, penalties are enhanced for felon-in-possession offenses if the defendant had a prior violent-crime conviction. *See* ARK. CODE ANN. § 5-73-103(c)(1) (West, Westlaw through laws effective June 14, 2018 in the 2018 Fiscal Sess. and 2d Extraordinary Sess.); IND. CODE § 35-47-4-5(c) (West, Westlaw through 2018 2d Reg. Sess.); WIS. STAT. ANN. § 941.29 (4m)(a) (2016). Similarly, Massachusetts enhances penalties for offenses involving silencers, tear gas, or carrying a loaded firearm while under the influence. *See* MASS. GEN. LAWS ANN. ch. 269, § 10G(a) (West, Westlaw through Ch. 108 of 2018 2d Annual Sess.). Additionally, three states enhance penalties for the possession or use of a machine gun if the weapon was possessed or used for an "aggressive or offensive purpose," and establish a presumption of such a purpose if the defendant has a prior violent-crime conviction. *See* ARK. CODE ANN. § 5-73-204, 205(a)(2); MD. CODE ANN., CRIM. LAW § 4-405 (West, Westlaw through legislation effective June 1, 2018, Reg. Sess.); MONT. CODE ANN. § 45-8-304-05 (West, Westlaw through the 2017 Sess.).

other specific offenses are also subject to enhancement in certain states based on a violent prior.[125]

Even more common than these recidivism statutes that are triggered by a specific current offense are more generally targeted statutes that impose enhanced penalties when a defendant has a certain number of convictions for crimes classified as violent. Such statutes are typically labeled as "repeat," "habitual," or "persistent" offender laws. (Some also go by the more colloquial "three strikes and you are out" label.[126]) They are found in some version in close to half the states,[127] albeit with wide variation in the technical details.[128] Although terms like "persistent" or "habitual" violent offender

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[125] ARK. CODE ANN. § 5-13-211 (assault on law enforcement officer); VT. STAT. ANN. tit. 13, § 2303 (West, Westlaw through Acts of the Adjourned Session effective May 25, 2018) (murder); WIS. STAT. ANN. § 940.235 (strangulation); § 940.32 (stalking).

[126] *See* FRANKLIN E. ZIMRING, GORDON HAWKINS & SAM KAMIN, PUNISHMENT AND DEMOCRACY: THREE STRIKES AND YOU'RE OUT IN CALIFORNIA 4 (2001) (discussing development of "three strikes" laws in Washington and California).

[127] I count here only the laws in which "violent crime," "violent felony," or a close cognate is treated as a legally relevant category. There are many additional habitual criminal laws that do not distinguish between violent and nonviolent offenses.

[128] *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-706(B) (West, Westlaw through the 2018 1st Special Sess. and legislation effective May 16, 2018 of the 2d Reg. Sess.) (three convictions for "violent or aggravated" felonies); CAL. PENAL CODE § 667(e)(1) (West, Westlaw through ch. 13 of 2018 Reg. Sess.) ("defendant has one or more prior serious and/or violent felony convictions"); § 667(e)(2)(A) (current felony conviction and at least two prior convictions for a "serious and/or violent felony"); COLO. REV. STAT. § 18-1.3-801(1)(a) (2015) (three convictions for "class 3 felony that is a crime of violence" or particular drug felonies); DEL. CODE ANN. tit. 11, § 4214(a) (West, Westlaw through 81 Laws 2018 chs. 200–262) (three convictions of "violent felony"; subsections (b)-(d) establish other enhancements for various combinations of violent and nonviolent felony convictions); FLA. STAT. § 775.084(1)(b)-(d) (West, Westlaw through 2018 2d Reg. Sess.) (defining for purposes of sentence enhancement the terms "habitual violent felony offender," "three-time violent felony offender," and "violent career criminal"); GA. CODE ANN. § 17-10-7(2) (West, Westlaw through 2018 Act 562) (two convictions for "serious violent felony"); LA. STAT. ANN. § 15:529.1(A)(3)(b) (West, Westlaw through the 2018 1st Extraordinary Sess.) (three convictions for "felonies defined as a crime of violence" or certain sexual offenses; (4)(c) provides another enhancement in cases of four felony convictions with one counting as a "crime of violence"); MD. CODE ANN., CRIM. LAW § 14-101(d) (two convictions for "crime of violence"; subsections (b) and (c) establish more severe enhancements for additional convictions); MINN. STAT. ANN. § 609.1095(2) (West, Westlaw through June 18, 2018 Reg. Sess.) (current conviction for "violent crime that is a felony" combined with two prior convictions for "violent crimes"); N.M. STAT. ANN. § 31-18-23(A) (West, Westlaw through May 16, 2018 2d Reg. Sess.) (three violent felony convictions); N.Y. PENAL LAW § 70.04(1)(a) (two convictions for "violent felony"); § 70.08(1)(a) (current conviction for "violent felony" combined with two prior convictions for "violent felony" or a designated sexual offense); N.C. GEN. STAT. ANN. § 14-7.7(a) (West, Westlaw through the end of the 2017 Reg. Sess.) (two convictions for "violent felonies"); 42 PA. STAT. AND CONS. STAT. ANN. § 9714(a)(1) (West, Westlaw through 2018 Reg. Sess. Acts 1–27, 31) (two convictions for "crime of violence"; further enhancement under (a)(2) for third conviction);

may call to mind the image of a hardened criminal who has been cycling in and out of prison for many years, it should be appreciated that several of these statutes require only two convictions,[129] few require more than three, and there is typically no limit on the age of the convictions that qualify.[130] Additionally, several of the statutes specify that the most recent conviction need not itself be for a violent crime, but might be for any felony.[131] Moreover, in at least one state, a juvenile adjudication can count,[132] and in at least one other all of the triggering convictions may come in a single multicount case.[133]

In addition to such recidivism laws, states have adopted a multitude of additional violence-specific sentence enhancement statutes. For instance, two states increase penalties if a violent offense is committed in the presence of a child,[134] while another two do so if the violent offense is committed in a school zone.[135] Four states increase penalties if the victim of a violent offense is elderly.[136] Another does so if the violent offense was committed with an

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TENN. CODE ANN. § 40-35-120(a) (West, Westlaw through May 21, 2018 2d Reg. Sess.) (either two or three convictions for "violent offense," depending on the severity of the offenses); UTAH CODE ANN. § 76-3-203.5(1)(b) (West, Westlaw through Act 467 of 2018 Gen. Sess.) (three convictions for "violent felony"); VA. CODE ANN. § 19.2-297.1 (West, Westlaw through end of 2018 Reg. Sess.) (three convictions for "act of violence"); VT. STAT. ANN. tit. 13, § 11a(a) (three convictions for violent felonies); WIS. STAT. ANN. § 939.619(2) (2016) (two convictions for "serious violent crime"); WYO. STAT. ANN. § 6-10-201(a) (West, Westlaw through all chapters effective May 1, 2018 Budget Session) (current conviction for "violent felony" with two prior felony convictions); *cf.* VA. CODE ANN. § 17.1-805(A) (requiring sentencing commission to adopt higher sentencing guidelines ranges for certain defendants with prior violent felony convictions). Other statutes are cited in the next five footnotes.

[129] *See, e.g.*, ARK. CODE ANN. § 5-4-501(c)(1); CAL. PENAL CODE § 667(c); FLA. STAT. § 775.084(1)(b) (West, Westlaw through 2018 2d Reg. Sess.).

[130] For examples of exceptions, *see, e.g.*, HAW. REV. STAT. ANN. § 706-606.6(2) (West, Westlaw through Act 23 of 2018 Reg. Sess.); N.Y. PENAL LAW § 70.04(1)(b)(iv) (McKinney through L.2019, chs. 1–19)**.**

[131] *See, e.g.*, CAL. PENAL CODE § 667(c); MISS. CODE ANN. § 99-19-83 (West, Westlaw through 2018 Reg. Sess. laws effective through June 29, 2018); N.M. STAT. ANN. § 31-18-17.

[132] CAL. PENAL CODE § 667 (d)(3).

[133] LA. STAT. ANN. § 15:529.1(B).

[134] ARK. CODE ANN. § 5-4-703 (West, Westlaw through laws effective June 14, 2018 in the 2018 Fiscal Sess. and 2d Extraordinary Sess.); MD. CODE ANN., CRIM. LAW § 3-601.1 (West, Westlaw through legislation effective June 1, 2018 Reg. Sess.).

[135] *See* LA. STAT. ANN. § 14:95.2(D)(2) (West, Westlaw through the 2018 1st Extraordinary Sess.); WIS. STAT. ANN. § 939.632 (2016).

[136] LA. STAT. ANN. § 14:50.2; MISS. CODE ANN. § 99-19-351; WIS. STAT. ANN. § 973.017(5)(b) (2016); W. VA. CODE § 61-2-10a (West, Westlaw through legislation of 2018 Reg. Sess.).

intent to affect the conduct of government or has a similar "terrorism" motive.[137]

In many more states, violent crime sentences are increased if the defendant used, or sometimes was even just in possession of, a firearm at the time of the offense.[138] Similarly, several states have enhancements if the defendant was wearing body armor during the commission of a violent crime.[139] A few additional miscellaneous enhancements have also been adopted.[140]

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[137] 18 PA. STAT. AND CONS. STAT. ANN. § 2717(a) (West, Westlaw through 2018 Reg. Sess. Acts 1–27, 31).

[138] *See* COLO. REV. STAT. § 18-1.3-406 (7)(a) (2015) ("[T]he judge shall impose an additional sentence to the department of corrections of five years for the use of such weapon."); LA. CODE CRIM. PROC. ANN. art. 893.3 (West, Westlaw through the 2018 1st Extraordinary Sess.) (ten-year minimum, or twenty if firearm was discharged during commission of violent felony); LA. REV. STAT. § 14:95(B)(2) ("Whoever commits the crime of illegal carrying of weapons with any firearm used in the commission of a crime of violence . . . shall be fined not more than two thousand dollars, or imprisoned . . . for not less than one year nor more than two years, or both."); § 14:95(F) (establishing ten-year minimum for discharging firearm in connection with violent crime; also mandating additional penalties for use of machine gun or silencer, and for second and subsequent conviction); MD. CODE ANN., CRIM. LAW § 4-204(b)-(c) (five-year minimum); N.Y. PENAL LAW § 265.02(10) (McKinney through L.2019, chs. 1–19)) (indicating that committing a violent felony while possessing an unloaded firearm constitutes the separate crime of "criminal possession of a weapon in the third degree"; aggravated forms of the offense are recognized in §§ 265.08 and 265.09(1)); 42 PA. STAT. AND CONS. STAT. ANN. § 9712(a) (five-year minimum); TENN. CODE ANN. § 39-17-1304 (West, Westlaw through May 21, 2018 2d Reg. Sess.) (criminalizing possession of firearm during violent crime); WIS. STAT. ANN. § 973.123 (imposing mandatory minimum if person with prior violent felony uses firearm in commission of violent felony). In some states, additional penalties are imposed if unusually dangerous firearms were used. MD. CODE ANN., CRIM. LAW § 4-306(b) (assault pistol or high-capacity magazine); § 4-404 (machine gun); MONT. CODE ANN. § 45-8-303 (West, Westlaw through the 2017 Sess.) (machine gun); VA. CODE ANN. § 18.2-300 (West, Westlaw through end of 2018 Reg. Sess.) (sawed off shotgun); § 18.2-289 (machine gun). At least one state has also established a sentence enhancement for the use of a conducted energy device used (Taser) in the commission of a violent misdemeanor. IDAHO CODE § 18-3325 (West, Westlaw through all immediately effective legislation of the 2d Reg. Sess. of the 64th Legislature).

[139] *See* ARK. CODE ANN. § 5-79-101 (West, Westlaw through laws effective June 14, 2018 in the 2018 Fiscal Sess. and 2d Extraordinary Sess.); CAL. PENAL CODE § 12022.2 (West, Westlaw through ch. 13 of 2018 Reg. Sess.); MD. CODE ANN., CRIM. LAW § 4-106; N.Y. PENAL LAW § 270.20; OHIO REV. CODE ANN. § 2929.14(B)(1)(d) (West, Westlaw through File 66 of the 132d G.A. (2017–18)); VA. CODE ANN. § 18.2-287.2.

[140] *See* CAL. PENAL CODE § 423.1 (recognizing offense of committing crime of violence to interfere with abortion or abortion protesters); MD. CODE ANN., CRIM. LAW § 9-302(c)(2) (enhancing sentence for obstruction of justice if underlying crime is violent); TRANSP. § 21-904(e)(2) (criminalizing driver's failure to obey police officer while officer "is signaling for the driver to stop for the purpose of apprehending the driver for the commission of a crime of violence for which the driver is subsequently convicted").

3. Other Effects on the Sentence

In addition to sentence enhancements and exclusions from alternatives to incarceration, violent offenders may find themselves subject to a variety of additional sentencing CVCs. For instance, in two states, violent offenders who are convicted of multiple counts are more likely to receive consecutive sentences.[141] In Delaware, defendants who are convicted of a violent felony are subject to a longer potential term of probation.[142] In Louisiana, a safety valve that in some circumstances permits sentences below an otherwise-applicable mandatory minimum excludes crimes of violence.[143] Many other examples are available.[144]

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[141] *See* IND. CODE § 35-50-1-2 (West, Westlaw through 2018 Reg. Sess.); WASH. REV. CODE ANN. 9.94A.589(1)(b) (West, Westlaw through all effective legislation of 2018 Reg. Sess.).

[142] DEL. CODE ANN. tit. 11, § 4333(b)(1) (West, Westlaw through 81 Laws 2018,.chs. 200–262). Similarly, a Vermont statute caps the length of probation terms only for *nonviolent* felonies. VT. STAT. ANN. tit. 28, § 205(3)(A) (West, Westlaw through Acts of the Adjourned Session effective May 25, 2018).

[143] LA. CODE CRIM. PROC. ANN. art. 890.1(D) (West, Westlaw through the 2018 1st Extraordinary Sess.).

[144] *See* COLO. REV. STAT. § 18-1.3-401(8)(a) (2015) (requiring, for person convicted of violent crime, a term of incarceration "of at least the midpoint in the presumptive range"); GA. CODE ANN. § 17-10-6.1(b) (West, Westlaw through 2018 Act 562) (establishing two types of mandatory minimums for offenses categorized as "serious violent felony"); HAW. REV. STAT. ANN. § 704-411 (West, Westlaw through Act 23 of 2018 Reg. Sess.) (specifying that defendant found not guilty by reason of insanity should be given the least restrictive commitment possible *if the charge was nonviolent*); MINN. STAT. ANN. § 244.10(5a)(a)(8) (West, Westlaw through June 18, 2018 Reg. Sess.) (recognizing as ground to impose sentence above guidelines range that defendant has three violent crime convictions); MONT. CODE ANN. § 46-18-255(1) (West, Westlaw through the 2017 Sess.) (requiring judge, when sentencing violent offender to probation, to impose "reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant"); N.Y. PENAL LAW § 70.02(3) (McKinney through L.2019, chs. 1–19)) (establishing various minimum terms for violent felonies, depending on the class of the felony); N.C. GEN. STAT. ANN. § 15A-1353 (West, Westlaw through the end of the 2017 Reg. Sess.) (permitting pregnant defendant to defer sentence starting date only if she has been convicted of nonviolent crime); OHIO REV. CODE ANN. § 2967.28(B) (requiring that sentence for certain violent offenses include period of "post-release control"); TENN. CODE ANN. § 40-35-122(a) (West, Westlaw through May 21, 2018 2d Reg. Sess.) (prohibiting sentences of continuous confinement, but only for offenses classified as "non-violent property" offenses§ 9.94A.505(7) (denying sentencing credits to violent offenders for time spent on electronic monitoring prior to sentencing); § 9.94A.650(1)(a); (excluding violent offenders from "first-time offender waiver," which permits judge to sentence below standard sentencing range);); WASH. REV. CODE ANN. § 9.94A.701(1)-(2) (requiring for violent offenders lengthier periods of post-incarceration supervision); Additionally, in a few states, violent offenders are categorically excluded from release pending sentencing or appeal. *See* ARK. CODE ANN. § 16-90-122(a)(1) (West, Westlaw through laws effective June 14, 2018 in the 2018 Fiscal Sess. and 2d Extraordinary Sess.); COLO. REV. STAT. § 16-4-201.5(1)(d); *cf.*

C. CORRECTIONS-RELATED CVCS

1. Release from Prison

In general, a judge's decision to sentence a defendant to a particular term in jail or prison sets parameters on the defendant's length of stay, but does not dictate the precise release date.[145] Indeed, depending on the offense, the offender, and the jurisdiction, there can be considerable variation in the percentage of the incarceration term that is actually served. Release dates are a function of parole laws and practices, "good time" credits for good behavior behind bars, and the availability of other early release opportunities. Given what we have already seen of CVCs, it should not be surprising that the rules governing release dates tend to be different and more restrictive for inmates who have been convicted of an offense categorized as "violent."[146] Indeed, in combination with the sentencing CVCs, the prison-release consequences deliver a sort of "double-whammy"—violent offenders get longer prison terms, and then have to serve a higher percentage of their prison terms before release.

Consider parole. In the thirty-three states with discretionary parole, a parole board makes the decision about when prisoners will return to the community.[147] Typically, inmates become eligible for parole after serving a certain percentage of their terms; the rules vary by state, but one-quarter is a common figure.[148] However, violent offenders often face special restrictions, which can take a number of different forms. Most notably, several states delay or even eliminate parole eligibility on the basis of violent crime convictions. For instance, in Arkansas, a defendant sentenced for a "serious violent felony" or a "felony involving violence" may be considered for parole

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VA. CODE ANN. § 19.2-319 (West, Westlaw through end of 2018 Reg. Sess.) (establishing rebuttable presumption against release if conviction for violent felony and nonsuspendable incarceration sentence imposed).

[145] *See* O'HEAR, *supra* note 22, at 107–09 (2018) (describing common mechanisms of early release).

[146] *See, e.g.*, GA. CODE ANN. § 42-9-45(b)(3)(A)(i), (b)(4)(A)(i) (excluding certain inmates from parole if they have ever been convicted of "serious violent felony"); MISS. CODE ANN. § 47-7-3(1)(g)(i) (excluding inmates from parole if convicted of violent crime).

[147] O'HEAR, *supra* note 22, at 67–68.

[148] *See, e.g.*, MD. CODE ANN., CORR. SERVS. § 7-301(a)(2) (West, Westlaw through legislation effective July 1, 2018, Reg. Sess.); MISS. CODE ANN. § 47-7-3(g)(i) (West, Westlaw through 2018 Reg. Sess.). Rather than setting parole eligibility as a certain percentage of the judge-imposed prison term, some states instead use a system in which the judge sentences defendants to a range, for example, five to ten years in prison. Joan Petersilia, *Parole and Prisoner Re-Entry*, *in* OXFORD HANDBOOK OF CRIME AND CRIMINAL JUSTICE 925, 928 (Michael Tonry ed., 2011). The defendant then becomes eligible for parole when the lower end of the range is reached, for example, at the five-year mark if the sentence is five to ten.

only after reaching the age of fifty-five,[149] while a defendant convicted twice of a violent felony is simply declared ineligible for parole.[150] Meanwhile, in Connecticut, parole eligibility for violent offenders is deferred until they have served 85% of their sentences.[151] This percentage-based approach has also been adopted in several other states.[152]

In Maryland, an inmate may generally be released on parole at any time for treatment purposes, but not if the inmate has been convicted of a violent crime.[153] Instead, violent offenders in Maryland must serve at least one-half of their prison terms before becoming eligible for parole consideration.[154] Similarly, in West Virginia, inmates may benefit from an accelerated parole program, but only if they do not have a current or past conviction for a violent felony.[155]

Violent offenders may also face special procedural rules. For instance, in Louisiana and Maryland, *nonviolent* offenders can obtain parole automatically without a hearing ("administrative parole") by satisfying certain conditions, but this streamlined process is not available to inmates who have been convicted of a violent crime.[156]

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[149] ARK. CODE ANN. § 16-93-615(h).

[150] *Id.* at § 16-93-609(b). For other statutes excluding violent offenders from parole in certain circumstances, see, e.g., CAL. PENAL CODE § 1203.085 (West, Westlaw through Ch. 94 of 2018 Reg. Sess.) (prohibiting parole for inmates who committed violent felony while out on parole); GA. CODE ANN. § 42-9-45(b)(3)(A)(i), (b)(4)(A)(i) (excluding certain inmates from parole if they have ever been convicted of "serious violent felony"); MISS. CODE ANN. § 47-7-3(1)(g)(i) (excluding inmates convicted of violent crime).

[151] CONN. GEN. STAT. ANN. § 54-125a(c) (West, Westlaw through Public Acts effective July 1, 2018).

[152] *See* COLO. REV. STAT. § 17-22.5-403(3.5)(a) (2015) (75%); GA. CODE ANN. § 42-9-45(f) (West, Westlaw through 2018 Legis. Sess.) (seven years or one-third of prison term, whichever comes first); KY. REV. STAT. ANN. § 439.3401(3) (West, Westlaw through laws effective July 14, 2018) (eighty-five percent); LA. STAT. ANN. § 15:574.4(B)(1) (West, Westlaw through the 2018 1st Extraordinary Sess.) (65%); § 15:574.4(A)(1)(b)(i) (75% if one prior violent-crime conviction; no eligibility at all after subsequent convictions).

[153] MD. CODE ANN., CORR. SERVS. § 7-301(a)(3) (West, Westlaw through legislation effective July 1, 2018, Reg. Sess.) (emphasis added).

[154] *Id.* at § 7-301(c)(1)(i). Other inmates generally become eligible for parole after serving one-quarter of their prison terms. § 7-301(a)(2).

[155] W. VA. CODE § 62-12-13(b)(1)(B)(i)-(ii) (West, Westlaw through legislation of 2018 1st Extraordinary Sess.). Similarly, Missouri excludes inmates with a prior violent felony from a special parole opportunity for inmates convicted of killing an abusive spouse or domestic partner. MO. ANN. STAT. § 217.692(2) (West, Westlaw through emergency legislation approved June 1, 2018, 2d Reg. Sess.).

[156] LA. STAT. ANN. § 15:574.2(C)(4)(a); MD. CODE ANN., CORR. SERVS. § 7-301.1(a)(3)(iii)(1). For other examples of special procedural rules, see COLO. REV. STAT. § 17-22.5-403(5)(b) (2015) ("[T]he board need only reconsider granting parole to [certain violent offenders] once every five years . . . ."); LA. STAT. ANN. § 574.2(3) (requiring meeting "at

Parole is not the only pathway to release from prison. Another common mechanism is "good time." Found in twenty-nine states,[157] good time provides inmates with credits toward early release based on their success in avoiding serious disciplinary infractions. Good time is available in some of the states that have eliminated discretionary parole, but can also be integrated into a parole system.[158] Structured similarly to good time, "earned time" has also been adopted by several states and provides credits based on an inmate's participation in work, rehabilitative programming, and the like.[159] However, as with parole, violent offenders often confront special restrictions on their ability to benefit from good time and earned time. For instance, Kentucky simply excludes violent offenders from good time.[160] Louisiana similarly excludes inmates on a *second* conviction for a violent crime,[161] and awards good time at a reduced rate on the first.[162] Similar restrictions are also common with earned time programs.[163]

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which at least five of the seven members of the committee are present and all members present vote to grant parole" for release of inmate convicted of violent crime against peace officer); MONT. CODE ANN. § 46-23-201(5) (West, Westlaw through the 2017 Sess.) (authorizing six-year delay before next hearing after denial of parole to violent offender; general rule is no more than one year); N.Y. CORRECT. LAW § 806(1)(i) (McKinney through L. 2018, Chs. 1 to 112) (excluding from presumptive release opportunity inmates convicted of violent felony).

[157] Michael O'Hear, *Solving the Good-Time Puzzle: Why Following the Rules Should Get You Out of Prison Early*, 2012 WIS. L. REV. 195, 197.

[158] *See* James B. Jacobs, *Sentencing by Prison Personnel: Good Time*, 30 UCLA L. REV. 217, 222-24 (1982) (describing ways that good time can be integrated into parole system).

[159] *Id*. n.10. What I call "earned time" here goes by different names in some states, such as "meritorious time." Programs in some states blend aspects of good time and earned time, basing credits on a combination of good behavior and program participation. *See, e.g.*, Michael O'Hear, *Good Conduct Time for Prisoners: Why (and How) Wisconsin Should Provide Credits Toward Early Release*, 98 MARQ. L. REV. 487, 536–37 (2014) (describing Washington program).

[160] KY. REV. STAT. ANN. § 439.3401(4) (West, Westlaw through laws effective July 14, 2018).

[161] LA. STAT. ANN. § 15:571.3(D)(1) (West, Westlaw through the 2018 1st Extraordinary Sess.).

[162] The standard rate in Louisiana is thirteen days for every seven days in actual custody, § 15:571.3(B)(1)(a), but the amount for first-time violent offenders is only one day for every three, § 15:571.3(B)(2)(a). Maryland also awards good time to violent offenders at a reduced rate. MD. CODE ANN., CORR. SERVS. § 3-704(b) (West, Westlaw through legislation effective July 1, 2018, Reg. Sess.).

[163] COLO. REV. STAT. § 17-22.5-405(5)(a) (2015); GA. CODE ANN. § 17-10-6.1(c)(4) (West, Westlaw through 2018 Legis. Sess.); 730 ILL. COMP. STAT. 5/5-6-2(c-1) (West, Westlaw through P.A. 100-601 of the 2018 Reg. Sess.); KY. REV. STAT. ANN. § 197.047(6)(b); LA. STAT. ANN. § 15:828(C)(2); § 15:833.1(D)-(E); MD. CODE ANN., CORR. SERVS. § 3-707(a)(2)(i); MISS. CODE ANN. § 47-5-431 (West, Westlaw through 2018 Reg. Sess.); § 47-5-138(5) (West, Westlaw through 2018 Reg. Sess.); N.M. STAT. ANN. § 33-2-34(A)(1)-(2) (West, Westlaw through 2018 2d Reg. Sess.); N.Y. CORRECT. LAW § 803(1)(d)(ii) (McKinney

While parole, good time, and earned time are the most widely utilized mechanisms for early release, states have developed a number of other devices, which also tend to operate differently for violent offenders. For instance, some states have compassionate release programs that grant early release to inmates who are disabled, terminally ill, or simply very old and unlikely to harm anyone. Violent offenders, however, can be subject to exclusion or special restrictions.[164] Similarly, some states permit inmates to be released early to a halfway house, but restrict such placements for violent offenders.[165] Additionally, some states authorize corrections officials to move inmates from prisons into home detention and/or electronic monitoring in the community, but exclude violent offenders or impose special limitations on their eligibility.[166] Violent offenders may also be precluded from transfer from prison into drug treatment or other rehabilitative programs,[167] or into other special supervision programs in the community.[168] Numerous other illustrations are available.[169]

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through L. 2019, chs. 1–19112); S.C. CODE ANN. § 24-13-230(B) (West, Westlaw through 2018 Act No. 218); TEX. CODE CRIM. PROC. ANN. art. 43.101(b), (d) (West, Westlaw through the 2017 Reg. and 1st Called Sessions of the 85th Legis.); § 9.92.151(1). Similarly, Arizona denies earned release to inmates who were convicted of a violent crime that was committed under the influence of a narcotic drug; WASH. REV. CODE § 9.94A.729(3) (West, Westlaw through all effective legislation of 2018 Reg. Sess.).. ARIZ. REV. STAT. ANN. § 41-1604.15 (West, Westlaw through the 2018 1st Special Sess., and legislation effective May 16, 2018 of the 2d Reg. Sess.).

[164] COLO. REV. STAT. § 17-1-102(7.5)(b)(II) (excluding certain violent offenders from definition of "special needs offender"; provisions governing early parole for "special needs offender" are set forth in § 17-22.5-403.5); LA. STAT. ANN. § 574.4(A)(4)(a) (excluding violent offenders from age-based parole); MISS. CODE ANN. § 47-7-3(1)(g)(ii) (same).

[165] COLO. REV. STAT. § 16-11-102 (2015); MICH. COMP. LAWS ANN. § 791.265a(8) (West, Westlaw through all effective legislation of 2018 Reg. Sess.); VA. CODE ANN. § 53.1-155.1 (West, Westlaw through end of 2018 Reg. Sess.).

[166] *See* ARK. CODE ANN. § 16-93-711 (West, Westlaw through laws effective July 1, 2018 in the 2018 Fiscal Sess. and 2d Extraordinary Sess.); MD. CODE ANN., CORR. SERVS. § 3-404(2); VA. CODE ANN. § 53.1-131.2(C).

[167] *See* CONN. GEN. STAT. ANN. § 17a-681(b) (West, Westlaw through Public Acts effective July 1, 2018); IND. CODE § 11-13-9-1(1)(3) (West, Westlaw through 2018 Reg. Sess.); LA. STAT. ANN. § 15:574.62(B)(3) (West, Westlaw through the 2018 1st Extraordinary Sess.).

[168] *See* LA. STAT. ANN. § 15:529.2(B)(1); S.C. CODE ANN. § 24-13-720 (West, Westlaw through 2018 Act No. 218)**;** WASH. REV. CODE § 9.94A.6551 (West, Westlaw through all effective legislation of 2018 Reg. Sess.).

[169] *See, e.g.*, ARK. CODE ANN. § 12-28-604 (no emergency overcrowding release for violent offenders); LA. STAT. ANN. § 15:764(B) (same); MINN. STAT. ANN. § 244.0513 Subd. 2(6) (West, Westlaw through July 1, 2018, Reg. Sess.) (no release based on completion of drug treatment). Additionally, in other states, noncitizens who are violent offenders may miss out on the possibility of early release to deportation; they must serve out their entire sentence before the inevitable return to their countries of origin. N.H. REV. STAT. ANN. § 651:25

2. Community Supervision

Corrections-related CVCs are not limited to release opportunities, but also extend to the period of post-release supervision, when individuals who have been convicted of violent crimes are apt to encounter rules that are less favorable in a number of respects. For instance, in a manner that is analogous to the operation of good time credits for prisoners, some states provide for early discharge from supervision for offenders who manage to avoid significant disciplinary problems.[170] However, violent offenders are often excluded from this opportunity or subjected to special restrictions.[171]

Individuals on supervision reside in the community subject to a variety of conditions, as determined by the jurisdiction's laws and the discretionary decisions of judges and supervisory agents. Violations of these conditions can lead to a revocation of supervision and a term of incarceration. Once again, though, the rules governing responses to violations may be quite different for violent than other offenders, particularly with respect to their eligibility for alternatives to revocation.[172] Additionally, in the event of revocation, violent offenders may face longer terms of reincarceration.[173]

VII(a)(3) (West, Westlaw through Ch. 334 of the 2018 Reg. Sess.); N.Y. EXEC. LAW § 259-i(d)(i) (McKinney through L. 2019, chs. 1–19); N.C. GEN. STAT. ANN. § 148-64.1(a)(2) (West, Westlaw through the end of the 2017 Reg. Sess.); WASH. REV. CODE § 9.94A.685 (West, Westlaw through all effective legislation of 2018 Reg. Sess.).

[170] Edward E. Rhine, Joan Petersilia & Kevin R. Reitz, *The Future of Parole Release*, 46 CRIME & JUST. 279, 326 (2017).

[171] *See* ARK. CODE ANN. § 16-90-1302(a)(1)(B); CAL. PENAL CODE § 3001(a) (West, Westlaw through Ch. 94 of 2018 Reg. Sess.); COLO. REV. STAT. § 18-1.3-401(1)(a)(V)(D) (2015); LA. STAT. ANN. § 15:574.6.1(A); MD. CODE ANN., CORR. SERVS. § 6-117(a)(4)(ii), (c)(1) (West, Westlaw through legislation effective July 1, 2018, Reg. Sess.); N.Y. CORRECT. LAW § 205(1)(a) (McKinney through L. 2018, Chs. 1 to 112); LA. CODE CRIM. PROC. ANN. art. 895.6(A) (West, Westlaw through the 2018 1st Extraordinary Sess.); WASH. REV. CODE § 9.94A.637(4).

[172] *See* CAL. PENAL CODE § 3063.1(a)(b)(1) (prohibiting revocation of parole for certain drug-related violations, but excluding parolees with violent felony conviction from this protection); LA. CODE CRIM. PROC. ANN. art. 899.2(A) (authorizing administrative sanctions for probation violations, but excluding violent offenders); MINN. STAT. ANN. § 609.14 subd. 2a(a)(1) (requiring probation agent to present court with local options to address violations by a defendant who is a "nonviolent controlled substance offender"); 42 PA. STAT. AND CONS. STAT. ANN. 9771.1(c)(2) (West, Westlaw through 2018 Reg. Sess. Acts 1 to 27 and 31) (disqualifying violent offenders from alternative program for violations). Additionally, in at least two states, there are special restrictions on bail release for violent offenders awaiting a hearing on an alleged violation. *See* FLA. STAT. § 903.0351(1)(a), (c) (West, Westlaw through 2018 2d Reg. Sess.); VT. STAT. ANN. tit. 28, § 301(4) (West, Westlaw through Acts of the Adjourned Session of the Vt. G.A. effective through June 1, 2018).

[173] *See* LA. STAT. ANN. § 15:574.9(H)(1) (parallel provisions for parole revocation); LA. CODE CRIM. PROC. ANN. art. 900(A)(5) (specifying that, when revoking a violent offender's probation, court has discretion over whether to award sentence credit for time served on

Moreover, violations that themselves qualify as "crimes of violence" may also trigger CVCs.[174]

The required length of time on supervision[175] and the intensity of supervision[176] may also be categorically different for violent offenders. Such differences matter, not only because of the intrusiveness and inconvenience of supervision, but also because longer and closer supervision increases the likelihood of detection and sanctioning of technical violations, including through revocation.[177] Violent offenders returning from prison may also be denied access to helpful transitional opportunities and services.[178]

3. Other Corrections CVCs

Additional statutes establish many other sorts of restrictions and requirements relating to the correctional management of violent offenders. For instance, they are excluded in California from an alternative custody

probation; for other defendants; court must award credit); art. 900(A)(6)(b) (capping term of incarceration following probation revocation, but recognizing exception for defendant convicted of violent crime); MD. CODE ANN., CORR. SERVS. § 7-401(d)(3) (denying violent offenders credit for time on parole before revocation); N.H. REV. STAT. ANN. § 651-A:19(III)(c) (authorizing "extended term of recommittal for greater than 90 days" if defendant on parole for violent crime).

[174] *See* CAL. PENAL CODE § 3069(c)(2) (excluding parolee from Parole Violation Intermediate Sanctions program if violation is violent felony); COLO. REV. STAT. § 17-2-103.5(1)(a)(II)(B) (requiring officer to initiate revocation of parolee arrested and charged with violent crime); MICH. COMP. LAWS ANN. § 791.236 (West, Westlaw through all effective legislation of 2018 Reg. Sess.) (requiring revocation if violent felony committed while on parole).

[175] *See* IND. CODE § 35-50-6-1 (West, Westlaw through 2018 Reg. Sess.).

[176] *See* FLA. STAT. § 948.12(2) (requiring intensive parole supervision for "violent habitual offender" or "violent career criminal"); IND. CODE § 35-38-2.5-12 (setting forth special supervision requirements for violent offenders on home detention); MICH. COMP. LAWS ANN. § 791.240(1) (setting forth "special provisions" for supervision of parolee serving sentence for violent felony).

[177] *See, e.g.*, Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1062 (2013) ("[L]engthy periods of supervision serve little purpose other than to provide almost unlimited opportunity for violations and revocation.").

[178] *See* ARIZ. REV. STAT. ANN. § 31-281(B)(1)(c) (West, Westlaw through the 2018 1st Special Sess., and legislation effective May 16, 2018 of the 2d Reg. Sess.) (transition program); § 41-1604.18(A)(1)(b) (reentry community work program); CAL. PENAL CODE § 6243(a)(1) (West, Westlaw through Ch. 94 of 2018 Reg. Sess.) (substance abuse community correctional detention centers); § 6263 (reentry work furlough program); KY. REV. STAT. ANN. § 532.100 (West, Westlaw through laws effective July 14, 2018) (opportunity to serve last five years of prison term in jail); LA. STAT. ANN. § 15:1199.7(C)(2) (West, Westlaw through the 2018 1st Extraordinary Sess.) (rehabilitation and workforce development program); S.C. CODE ANN. § 24-13-125 (West, Westlaw through 2018 Act No. 218) (work release).

program for female offenders.[179] Similarly, Colorado excludes defendants convicted of a violent felony from placement in a minimum security facility until they have served at least six months in a more restrictive setting.[180] Likewise, Indiana imposes special restrictions on inmates convicted of violent crimes who are placed in a minimum security release program.[181] Other statutes similar in spirit to these are found in many other states.[182]

D. CVCS SPECIFIC TO JUVENILE OFFENDERS

In addition to all of the CVCs we have considered thus far that apply more generally, many states also have consequences that are specific to juveniles who are accused of, or have been adjudicated delinquent for, a violent offense.

For instance, whether a juvenile is charged with an offense that is classified as "violent" may determine whether he or she is prosecuted in the juvenile or the adult system.[183] The venue of prosecution, in turn, may have profound consequences as to the nature and severity of the punishment, and ultimately the juvenile's long-term life prospects.[184] Yet, in some states,

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[179] CAL. PENAL CODE § 1170.05.

[180] COLO. REV. STAT. § 17-25-103.

[181] IND. CODE § 11-10-8-2(2)(b)(1).

[182] *See* LA. STAT. ANN. § 574.4.4(A) (limiting special intensive parole option to nonviolent offenders); MONT. CODE ANN. § 7-32-2225(1) (West, Westlaw through the 2017 Sess.) (allowing some nonviolent offenders sentenced to county jail to serve their sentences by performing work for the county "without actual physical confinement"); S.C. CODE ANN. § 24-3-210(D) (establishing special procedural requirements before prison furlough may be granted to violent offender); TEX. PARKS & WILD. CODE ANN. § 13.016(e) (West, Westlaw through the 2017 Reg. and 1st Called Sessions of the 85th Legis.) (permitting some nonviolent offenders to serve their sentences through work in state parks or on other public lands); VT. STAT. ANN. tit. 28, § 808(f) (West, Westlaw through Acts of the Adjourned Session of the Vt. G.A. effective through June 1, 2018) ("[T]he Department shall not use lack of housing as the sole factor in denying furlough to offenders who have served at least their minimum sentence for a *nonviolent* misdemeanor or *nonviolent* felony . . . ." (emphasis added)); WASH. REV. CODE § 9.94A.680(2) (West, Westlaw through all effective legislation of 2018 Reg. Sess.) ("[F]or offenders convicted of nonviolent offenses only, eight hours of community restitution may be substituted for one day of total confinement . . . ."); § 72.66.016(2) (deferring furlough eligibility for violent offenders until half of minimum term served); W. VA. CODE § 31-20-31(a) (West, Westlaw through legislation of 2018 1st Extraordinary Sess.) (requiring creation of jobs programs for certain jail inmates, but excluding those convicted of violent felony).

[183] *See, e.g.*, N.Y. CRIM. PROC. LAW § 722.23(1)(a) (McKinney through L. 2019, chs. 1–19) (establishing process for removal of felony cases against certain adolescent defendants to family court, but excluding cases in which violent felony charged); VA. CODE ANN. § 16.1-241(A) (West, Westlaw through end of 2018 Reg. Sess.) (limiting jurisdiction of juvenile court in cases in which juvenile alleged to have committed violent felony).

[184] One scholar summarizes the research this way:

violence charges automatically result in a transfer to adult court. Thus, in Arizona, prosecutors *must* charge as an adult those juveniles over the age of fourteen who are accused of committing a violent felony,[185] while a similar rule exists in Florida for juveniles over the age of fifteen who face a charge for a second violent crime.[186] In other states, a violence charge opens the door to a potential transfer, depending on the discretionary decisions of a judge and/or prosecutor. For instance, in Colorado, the juvenile court *may* enter an order certifying a twelve- or thirteen-year old to be held for adult proceedings if the juvenile is alleged to have committed a crime of violence,[187] while in Wyoming prosecutors are authorized to choose a juvenile or adult court in cases in which a juvenile aged fourteen or older is charged with a violent felony.[188]

> Criminal court judges sentence transferred youths like adults, which increases their likelihood of subsequent offending. While all inmates potentially face abuse, adoloscents' size, physical strength, lesser social skills, and lack of sophistication increase their risk for physical, sexual, and psychological victimization. . . . Prisons are developmentally inappropriate places for youths to form an identity, acquire social skills, or make a successful transition to adulthood. Imprisoning them exacts different and greater developmental opportunity costs than those experiences by adults. It disrupts normal development—completing education, finding a job, forming relationships, and creating social bonds that promote desistance [from crime]—and ground lost may never be regained.

Feld, *supra* note 89, at 378. *See also* Megan Bears Augustyn & Thomas A Loughran, *Juvenile Waiver as a Mechanism of Social Stratification: A Focus on Human Capital*, 55 CRIMINOLOGY 405, 425–26 (2017) (finding large earnings differences seven years after sanctioning between matched samples of juveniles who were prosecuted in adult versus juvenile court).

[185] ARIZ. REV. STAT. ANN. § 13-501(A)(5) (West, Westlaw through the 2018 1st Special Sess., and legislation effective May 16, 2018 of the 2d Reg. Sess.).

[186] FLA. STAT. § 985.557(2)(a) (West, Westlaw through 2018 2d Reg. Sess.). For younger juveniles facing a second charge, prosecution in adult court is favored, but not mandatory. *See* § 985.556(3)(a). For additional statutes mandating prosecution in adult court, see N.Y. CRIM. PROC. LAW § 722.23(1)(a) (McKinney through L. 2019, chs. 1–19) (establishing process for removal of felony cases against certain adolescent defendants to family court, but excluding cases in which violent felony charged); VA. CODE ANN. § 16.1-241 (West, Westlaw through end of 2018 Reg. Sess.) (limiting jurisdiction of juvenile court in cases in which juvenile alleged to have committed violent felony); W. VA. CODE § 49-4-710(d) (requiring transfer from juvenile court if probable cause that juvenile at least fourteen, committed violent felony, and has previously been adjudged delinquent for commission of violent felony).

[187] COLO. REV. STAT. § 19-2-518(1)(a)(I)(A) (2015). For another statute giving the juvenile court discretion to transfer certain violent crime cases, *see* W. VA. CODE § 49-4-710(g)(1).

[188] WYO. STAT. ANN. § 14-6-203(f)(iv) (West, Westlaw through 2018 Budget Session). For other statutes similarly giving prosecutors the ability to proceed in adult court in certain violent crime cases, *see* CAL. WELF. & INST. CODE § 707(b)(21) (West, Westlaw through Ch. 119 of 2018 Reg. Sess.); COLO. REV. STAT. § 19-2-517(1)(a)(III); VA. CODE ANN. § 16.1-241 (West, Westlaw through end of 2018 Reg. Sess.); WASH. REV. CODE § 13.04.030(1)(e)(v).

Other juvenile-specific CVCs parallel the CVCs we have already considered relating to adult pre-conviction processes, sentencing, and corrections. For instance, juveniles who face violence charges in the juvenile system are more likely to be subjected to pretrial detention and more likely to be held for longer periods of time.[189] They may also be excluded from a range of pretrial diversion opportunities that are open to other juvenile defendants.[190] Similarly, juveniles who have been found delinquent for an offense classified as violent may miss out on post-adjudication alternatives to confinement.[191] They may also be subject to various analogs to the adult sentence enhancements considered above,[192] and to harsher dispositions in a variety of other ways.[193]

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[189] *See* COLO. REV. STAT. § 19-2-508(3)(a)(III)(A) (establishing presumption in favor of detention if juvenile alleged to have committed violent felony); GA. CODE ANN. § 15-11-504(c) (West, Westlaw through 2018 Legis. Sess.) (permitting juvenile detained for commission of "serious violent felony" to be held in adult facility for up to 24 hours in certain circumstances); 705 ILL. COMP. STAT. 405/5-410(2)(c) (West, Westlaw through P.A. 100-601 of the 2018 Reg. Sess.) ("[N]o minor shall be detained in a county jail or municipal lockup for more than 12 hours, unless the offense is a crime of violence in which case the minor may be detained up to 24 hours."); LA. CHILD CODE ANN. art. 877(A) (West, Westlaw through 2018 1st Extraordinary Sess.) (permitting longer period of detention prior to adjudication hearing if juvenile charged with violent crime).

[190] *See* CAL. EDUC. CODE § 51220.2(b)(1) (West, Westlaw through Ch. 119 of 2018 Reg. Sess.) ("teen court" and "peer court"); FLA. STAT. § 985.16(2)(d) (limiting community arbitration program such that juveniles with prior first-degree violent misdemeanor are more likely to be excluded); 705 ILL. COMP. STAT. 410/20(b) (drug court); TEX. FAM. CODE ANN. § 52.031(a)(3)(B) (West, Westlaw through 2017 Reg. and 1st Called Sess.) (first offender program); VA. CODE ANN. § 16.1-260(B) (informal case processing); WASH. REV. CODE § 13.40.127(1) (West, Westlaw through all effective legislation of 2018 Reg. Sess.) (deferred disposition); W. VA. CODE § 49-4-702(c) (informal resolution); § 49-4-725(a) (West, Westlaw through legislation of 2018 1st Extraordinary Sess.) (restorative justice).. Additionally, as with violent adult offenders, violent juveniles may face distinct rules in cases of incompetency. DEL. CODE ANN. tit. 10, § 1007A(c)(3) (West, Westlaw through 81 Laws 2018, chs. 200–71).

[191] *See* COLO. REV. STAT. § 19-2-908(1)(c)(I)(A) (2015) ("Upon adjudication as a violent juvenile offender, . . . the juvenile shall be placed or committed out of the home for not less than one year."); VA. CODE ANN. § 16.1-278.8.(A)(7a)(ii) (excluding violent juvenile offenders from probationary sentencing option with treatment).

[192] *See* CAL. WELF. & INST. CODE § 602.3(a) (requiring commitment of "any minor adjudicated to be a ward of the court for the personal use of a firearm in the commission of a violent felony"); 705 ILL. COMP. STAT. 405/5-820(f) (requiring commitment until age twenty-one of certain repeat violent juvenile offenders); LA. STAT. ANN. § 14:95.8(B)(4) (West, Westlaw through 2018 1st Extraordinary Sess.) (requiring prison term of at least six months for any juvenile adjudicated delinquent for unlawful possession of a handgun "having been previously found guilty or adjudicated delinquent for any crime of violence").

[193] *See* ALA. CODE § 12-15-133(h) (West, Westlaw through Act 2018-579) (permitting record of adjudication for violent offense to be used against juvenile in subsequent cases); COLO. REV. STAT. § 19-2-518(1)(d)(I), (III) (requiring that juvenile convicted of violent crime be sentenced under adult sentencing law); 730 ILL. COMP. STAT. 5/5-6-3(b)(7)(v) (authorizing

E. CONSEQUENCES OUTSIDE THE CRIMINAL-JUSTICE SYSTEM

The legal consequences of a conviction may continue past completion of the sentence and involve various disabilities that are not formally included in the sentence and may not even be known by the judge at the time of sentencing.[194] While any conviction may give rise to such "collateral" consequences, those associated with violent offenses tend to be especially numerous and severe.

1. Employment-Related CVCs

Consider first the employment-related disabilities. Among the most common and practically significant are restrictions on working with children, the elderly, and the disabled.[195] These CVCs are premised on a view that

court to require certain juveniles convicted of violent crime to switch schools); LA. CHILD CODE ANN. art. 898(B)(1) (West, Westlaw through 2018 1st Extraordinary Sess.) (capping length of commitment period for *nonviolent* felony adjudications); art. 898(C)(1) (same as to period of probation); MO. ANN. STAT. § 219.091(5) (West, Westlaw through emergency legislation approved June 1, 2018, 2d Reg. Sess.) (excluding violent juvenile offenders from community work program); N.H. REV. STAT. ANN. § 169-B:4(V)(a) (permitting juvenile court under certain circumstances to retain jurisdiction beyond normal period over juvenile "found to have committed a violent crime"); § 169-B:31-c(I) ("[T]he court shall close all cases other than those involving serious violent offenses no later than 2 years after the date of adjudication."); § 621:19(I-a) (West, Westlaw through Ch. 334 of the 2018 Reg. Sess.) (generally capping commitment terms at six months, but making exception for juveniles found delinquent for "serious violent offense"); § 621:19(IV) (requiring quarterly review of case of each committed juvenile to determine if juvenile can be safely moved from facility, but making exception if juvenile is "serious violent offender"); VA. CODE ANN. § 16.1-272(A)(1) (authorizing court, if juvenile convicted of "violent juvenile felony," to require that some or all of sentence be served "in the same manner as provided for adults"); § 16.1-278.8(A)(4a)(ii) (excluding violent juvenile offenders from boot camp sentence); WASH. REV. CODE § 13.40.160(3) (excluding certain violent juvenile offenders from "special sex offender disposition alternative"); § 13.40.210(2) (excluding violent juvenile offenders from early release based on institutional overcrowding); W. VA. CODE § 49-4-714(b)(6) (prohibiting out-of-home placements for certain juveniles adjudicated delinquent for *nonviolent* misdemeanor); WIS. STAT. ANN. § 938.535 (2016) (excluding violent juvenile offenders from early release into intensive supervision); WYO. STAT. ANN. § 14-6-246(a)(iv) (West, Westlaw through the 2018 Budget Sess.) (assigning higher "sanction level" to juveniles adjudicated delinquent for violent felony).

194 *See* O'HEAR, *supra* note 22, at 45-46 (2018) (providing illustrations of collateral consequences and noting that "some consequences in some states may last for years after the sentence is over—potentially, indeed, for the rest of the offender's life").

195 *See* ARIZ. REV. STAT. ANN. § 36-594(3) (West, Westlaw through the 2018 1st Special Sess., and legislation effective May 16, 2018, 2d Reg. Sess.) (authorizing denial, suspension, or revocation of license for home for developmentally disabled if "employee, applicant, licensee or adult household member" has been convicted of "violence related offense"); ARK. CODE ANN. § 20-38-105(c)(3) (West, Westlaw through laws effective July 1, 2018, Fiscal Sess. and 2d Extraordinary Sess.) (authorizing permanent disqualification from employment

with child care facility based on violent offense); CAL. EDUC. CODE § 44237(e)(1) ("[A private school] shall not employ a person who has been convicted of a violent or serious felony . . . ."); § 44830.1(a) ("[N]o person who has been convicted of a violent or serious felony shall be hired by a school district in a position requiring certification qualifications or supervising positions requiring certification qualifications."); § 45125.1(f)(2) (establishing bypass process around general prohibition on school contractors having employees with felony convictions who come into contact with pupils, but excluding employees with violent convictions); CAL. VEH. CODE § 13370(a)(5) (mandating denial or revocation of "[s]choolbus, school pupil activity bus, general public paratransit vehicle, or youth bus driver certificate, or a certificate for a vehicle used for the transportation of developmentally disabled persons" based on violent felony conviction); CAL. WELF. & INST. CODE § 11324(c)(1) (requiring denial of payment for certain child care services if provider has violent felony conviction); COLO. REV. STAT. § 26-6-120(2)(b) (prohibiting contract under child care assistance program if provider has violent crime conviction); § 22-32-109.8(6.5)(a)(I)(B) (disqualifying from school district employment individuals convicted of violent crime); § 22-60.5-107(2.5)(a)(I)(B) (mandating denial or loss of educator license based on violent crime conviction); DEL. CODE ANN. tit. 14, § 1218(b)(1)(b) (mandating revocation of education license based on violent felony conviction); tit. 31, § 309(d)(1)(c) (prohibiting individual from serving as employee, volunteer, or contractor for a child-serving entity if individual has had violent felony conviction in past seven years for the amount of time indicated); KY. REV. STAT. ANN. § 17.165(6) (West, Westlaw through laws effective July 14, 2018) ("No employee in a position which involves care and supervision of a minor as a child-serving professional . . . shall have been convicted of a violent crime . . . ."); § 164.281(3) (authorizing public institutions of postsecondary education to deny employment and even visiting privileges to anyone convicted of violent offense); § 216B.457(12)(a) ("Any employee or volunteer who has committed or is charged with the commission of a violent offense . . . shall be immediately removed from contact with a child within the residential treatment center until the employee or volunteer is cleared of the charge."); MD. CODE ANN., EDUC. § 2-206.1(a)(3) (West, Westlaw through legislation effective July 1, 2018, Reg. Sess.) (prohibiting nonpublic schools from hiring or retaining "employee who works with or has access to students" if employee has violent crime conviction); § 6-113(a)(3) (prohibiting employment by county education board of individual with violent crime conviction); MINN. STAT. ANN. § 171.3215(4) (West, Westlaw through laws effective July 1, 2018, Reg. Sess.) (permitting those convicted of *nonviolent* felony to obtain waiver of general prohibition on individuals with felony conviction from holding school bus driver license); N.H. REV. STAT. ANN. § 170-E:7(III) (generally requiring revocation, denial, or suspension of license for child day care providers based on violent crime conviction); § 170-E:29(III) (requiring corrective action plan for foster family home, institution or child-placing agency if staff member has violent crime conviction); N.Y. SOC. SERV. LAW § 390-b.3(a)(i) (McKinney through L. 2019, chs. 1–19) (generally requiring denial of application to operate day care center if any adult resident has violent crime conviction); OKLA. STAT. ANN. tit. 57, § 589A (West, Westlaw through legislation effective July 1, 2018, 2d Reg. Sess.) (prohibiting individuals registered as violent offenders from working with children or on school premises); S.C. CODE ANN. § 44-7-264(B)(1) (West, Westlaw through 2018 Act 226) ("A nursing home license or community residential care facility license must not be issued to the applicant, and if issued, may be revoked, if the [operator] . . . has been convicted of: . . . (b) any violent crime . . . ."); § 59-25-280(A) (mandating denial or revocation of teaching certificate based on violent crime conviction); S.D. CODIFIED LAWS § 13-10-13 (West, Westlaw through 2018 Session Laws) (prohibiting employment by school district if person has violent crime conviction); TENN. CODE ANN. § 71-2-403(e) (West, Westlaw through laws effective June 30, 2018, 2d Reg. Sess.) (disqualifying from adult day

committing a violent act, regardless of the victim or circumstances, shows that the perpetrator, in the words of a New Hampshire statute, "might be reasonably expected to pose a threat to a child"[196] or to another similarly vulnerable person. The statutes generally make no distinctions based on the age of the conviction, and few provide any flexibility in the handling of past conduct that was plainly aberrational or otherwise clearly a poor predictor of future conduct.[197]

Individuals with violence convictions may find themselves excluded from many other fields of work, too. For instance, several CVC statutes relate to work in security or investigations,[198] while others prohibit violent offenders from driving as part of a transportation network (i.e., Uber and its

care center employment individual with violent offense conviction, adjudication, or pending charge); § 71-3-507(e)(1)(A)(i)(b) (prohibiting childcare agency employment of person convicted of violent crime); WASH. REV. CODE § 72.05.440(1) (West, Westlaw through all effective legislation of 2018 Reg. Sess.) (prohibiting person with violent crime conviction from being employed in, or volunteering for, "position within the juvenile rehabilitation administration or any agency with which it contracts in which the person may have regular access to juveniles"); W. VA. CODE § 16-5C-21(a)(2) (generally prohibiting employment in nursing home of person with violent felony conviction).

196 N.H. REV. STAT. ANN. § 170-E:29(III).

197 For an unusual example of such flexibility, *see* N.Y. SOC. SERV. LAW § 390-b.3(a)(i) ("[T]he office of children and family services shall deny the application unless the office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of the children in the center, program or home . . . .").

198 *See* ARK. CODE ANN. § 17-39-211(10) (polygraph examiner); § 17-39-306(11) (voice stress examiner); § 17-40-306(d)(1)(B) (precluding license to work as security officer or investigator if person has been convicted of, *inter alia*, a violent Class A misdemeanor); CONN. GEN. STAT. ANN. § 20-691(b)(1) (West, Westlaw through Public Acts effective July 1, 2018) (locksmith); LA. STAT. ANN. § 37:3276.1(A)(1) (private security); § 40:1664.8(D)-(E) (indicating, as to property protection license, that *nonviolent* felony conviction not "automatic disqualification"); MISS. CODE ANN. § 73-69-11(2)(c)(ii)-(iii) (West, Westlaw through 2018 Reg. Sess.) (same as to license for alarm systems work); N.C. GEN. STAT. ANN. § 74D-10(a)(4) (West, Westlaw through the end of 2017 Reg. Sess.) (alarm systems work).

competitors),[199] working as a massage therapist,[200] or becoming a driving school instructor.[201] Still other CVCs affect eligibility for employment in emergency services[202] and health care.[203]

There are many other work-related restrictions that might be noted.[204] Some of the more unexpected include those that affect an individual's ability to work as

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[199] *See* ALA. CODE § 32-7C-29(b)(2); CAL. PUB. UTIL. CODE § 5445.2(a)(2)(B)(i) (West, Westlaw through Ch. 119 of 2018 Reg. Sess.); COLO. REV. STAT. § 40-10.1-605(3)(c)(I)(D) (2015); DEL. CODE ANN. tit. 2, § 1913(b)(2)-(3) (West, Westlaw through 81 Laws 2018, chs. 200–71); FLA. STAT. § 627.748(11)(d) (West, Westlaw through 2018 2d Reg. Sess.); ME. STAT. tit. 29-A, § 1675(2)(C) (West, Westlaw through Ch. 317 of 2018 Reg. Sess.); MASS. GEN. LAWS ANN. 159A 1/2, § 4(b)(vii) (West, Westlaw through ch. 108 of the 2018 2d Annual Sess.); MISS. CODE ANN. § 77-8-25(3)(b); N.M. STAT ANN. § 65-7-12(B) (West, Westlaw through end of 2018 2d Reg. Sess.); N.Y. VEH. & TRAF. LAW § 1699(b)(ii) (McKinney through L. 2019, chs. 1–19); OHIO REV. CODE ANN. § 4925.04 (West, Westlaw through File 84 of the 132 G.A. (2017-18)); 53 PA. CONS. STAT. § 57A12(c)(1) (West, Westlaw through 2018 Reg. Sess. Act 72); UTAH CODE ANN. § 13-51-107(2)(b)(vii) (West, Westlaw through the 2018 Gen. Sess.); VA. CODE ANN. § 46.2-2099.49(C)(2) (West, Westlaw through end of 2018 Reg. Sess.); W. VA. CODE § 17-29-13(b)(2) (West, Westlaw through legislation of 2018 1st Extraordinary Sess.). In a similar spirit, Pennsylvania also prohibits violent offenders from working as taxi drivers. *See* 53 PA. CONS. STAT. § 57B02(c)(10).

[200] *See* LA. STAT. ANN. § 37:3556(A)(5) (West, Westlaw through 2018 1st Extraordinary Sess.); NEV. REV. STAT. ANN. § 640C.700(3) (West, Westlaw through end of 77th Reg. Sess. (2017)); N.H. REV. STAT. ANN. § 328-B:8(IV) (West, Westlaw through ch. 334 of the 2018 Reg. Sess.). Similarly, New Hampshire also prohibits violent offenders from working in the fields of reflexology, structural integration, and Asian bodywork therapy. *See* § 328-H:8(I)(d).

[201] *See* MASS. GEN. LAWS ANN. 90, § 32G(c); N.Y. VEH. & TRAF. LAW § 394(4)(c); VT. STAT. ANN. tit. 23, § 708(4) (West, Westlaw through Adjourned Sess. acts effective June 1, 2018); WASH. REV. CODE § 46.82.350(2) (West, Westlaw through all effective legislation of 2018 Reg. Sess.).

[202] *See* DEL. CODE ANN. tit. 16, § 6712(b)(2)(b) (ambulance attendants and emergency medical technicians); IND. CODE ANN. § 16-31-3-14.5 (West, Westlaw through 2018 2d Reg. Sess. and 1st Special Sess.) (EMS).

[203] *See* DEL. CODE ANN. tit. 24, § 1799II(a)(4) (midwife license); N.M. STAT. ANN. § 61-6-15.1(A) (surgical and medical licenses); § 61-10-15.1(A)(3) (osteopathic medicine license); § 61-36-6(B) (lactation care license).

[204] *See, e.g.*, ARIZ. REV. STAT. ANN. § 32-4701(K)(1)(a) (West, Westlaw through the 2018 1st Special Sess., and legislation effective May 16, 2018, 2d Reg. Sess.) (generally permitting occupational licensing authorities to grant licenses notwithstanding criminal record, but making exception for violent crime convictions); ARK. CODE ANN. § 17-1-103(b)(2)(C) (West, Westlaw through laws effective July 1, 2018, Fiscal Sess. and 2d Extraordinary Sess.) (precluding consideration of misdemeanor convictions in license decisions, except if violent or sexual); COLO. REV. STAT. § 27-90-111(9)(b)(I) (restricting employment by department of human services); IND. CODE ANN. § 25-23.6-10.5-2.5(2)(A) (clinical addiction counselor associate); LA. STAT. ANN. § 27:28(B)(1)(e) (casino license, permit, or operating contract); § 37:36(A) ("A licensing entity shall not be required to issue a provisional license to any person convicted of any of the following: . . . (2) A 'crime of violence' . . . ."); § 46:2356(A)(1) (authorizing commission on the deaf to deny, suspend, or revoke interpreter's

- a used car or used car parts dealer,[205]
- a wind certification or hurricane mitigation inspector,[206]
- an embalmer,[207]
- a repairer or installer of manufactured homes,[208] or
- a precious metals dealer.[209]

Most of these statutes affect employment directly, usually through occupational licensing rules.[210] Other statutes have an indirect, but still potentially significant, impact. For instance, a Louisiana statute generally shields employers from civil liability for hiring an individual who has a criminal record, but recognizes an exception as to employees who have been convicted of a violent crime.[211] Meanwhile, another Louisiana statute uses a tax credit to encourage employers to hire first-time offenders, but limits the

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license on basis of conviction for "crime of violence"); MD. CODE ANN., CRIM. PROC. § 1-209(b) (West, Westlaw through laws effective July 1, 2018, 2d Reg. Sess.) (prohibiting denial of occupation license solely on conviction, but making exception for violent crime conviction); OHIO REV. CODE ANN. § 935.06(A)(6) (permits for wildlife shelter); S.C. CODE ANN. § 40-57-710(A)(9) (West, Westlaw through 2018 Act 226) (real estate license); VA. CODE ANN. § 46.2-116(C)(ii) (tow truck driver registration).

Work relating to alcohol and controlled substances seems particularly prone to restriction. *See, e.g.*, ARIZ. REV. STAT. ANN. § 36-2804(B)(2) (mandating that no principal officer or board member of nonprofit medical marijuana dispensary may have conviction for "excluded felony offense"; under § 36-2801(7)(a), violent crime is included in definition of "excluded felony offense"); CAL. BUS. & PROF. CODE § 26057(b)(4)(A) (West, Westlaw through the 2018 1st Special Sess., and legislation effective May 16, 2018, 2d Reg. Sess.) (requiring marijuana dispensary licensing authority to consider whether applicant has violent felony conviction); 410 ILL. COMP. STAT. 130/10 (West, Westlaw through P.A. 100–607 of 2018 Reg. Sess.) ("'Excluded offense' for cultivation center agents and dispensing organizations means: (1) a violent crime . . . ."); LA. STAT. ANN. § 26:80(F)(2)(a) (alcohol permits); MISS. CODE ANN. § 67-1-57(b) (West, Westlaw through 2018 Reg. Sess.) (managerial positions with alcohol permittees); OKLA. STAT. ANN. tit. 37A, § 2-147(B) (West, Westlaw through legislation effective July 1, 2018, 2d Reg. Sess.) ("mixed beverage, beer and wine, bottle club, public event or caterer license").

[205] GA. CODE ANN. § 43-47-10(1)(J) (West, Westlaw through 2018 Legis. Sess.).

[206] MISS. CODE ANN. § 83-1-191(1)(b)(ii)(1)(d).

[207] S.C. CODE ANN. § 40-19-230(A)(2).

[208] *Id.* at § 40-29-200(F).

[209] VT. STAT. ANN. tit. 9, § 3881(3)(B) (West, Westlaw through Adjourned Sess. acts effective June 1, 2018).

[210] *See, e.g.*, CAL. VEH. CODE § 13370(a)(5) (mandating denial or revocation of "schoolbus, school pupil activity bus, general public paratransit vehicle, or youth bus driver certificate" based on violent felony conviction); DEL. CODE ANN. tit. 14, § 1218(b)(1)(b) (mandating revocation of education license based on violent felony conviction).

[211] LA. STAT. ANN. § 23:291(E)(2)(b) (West, Westlaw through 2018 1st Extraordinary Sess.).

benefit to those who have been convicted of a *nonviolent* offense.[212] Finally, it might be noted that a violence conviction can even affect a person's ability to do volunteer work.[213]

2. CVCs Relating to Privacy and Stigma

The formal legal restrictions on employment for violent offenders complement the private discrimination of employers, as well as that of other important private actors like landlords and lenders. Much research indicates that individuals who have been convicted of violent crimes face biases that are even stronger than those that normally result from a criminal record.[214] Discrimination by private actors is enabled by the easy availability of information about individuals' criminal history[215] and seemingly legitimized when there is no official marker of rehabilitation to offset the stigma of a conviction. As a result of various CVCs, these factors tend to be especially problematic for violent offenders.

For instance, consider sealing and expungement laws. The specifics vary widely from state to state, but these laws generally serve to conceal certain conviction records from public access through official channels, usually after a certain amount of time has passed since the conviction.[216] In many states, however, individuals convicted of crimes classified as "violent" are simply precluded from taking advantage of whatever sealing or expungement process exists in the state.[217] Moreover, even when violent

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[212] *Id*. at § 47:287.752(A).

[213] *See, e.g.*, DEL. CODE ANN. tit. 16, § 6647(b)(2)(a) (generally requiring denial of membership in volunteer fire department if applicant has been convicted or released from custodial confinement in past five years for "serious crime of violence").

[214] *See, e.g.*, DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION 124–25 (2007) (discussing survey of employers).

[215] *See* NAT'L ASS'N CRIM. DEFENSE LAWYERS, *supra* note 53 at 55 (discussing easy availability of criminal records).

[216] *Id*. at 57–59.

[217] *See* ARK. CODE ANN. § 16-90-1408(a)(5) (West, Westlaw through laws effective July 1, 2018, Fiscal Sess. and 2d Extraordinary Sess.); COLO. REV. STAT. § 19-1-306(5)(h) (2015); DEL. CODE ANN. tit. 10, § 1017(a)(3) (West, Westlaw through 81 Laws 2018, Chs. 200–271); IDAHO CODE ANN. § 20-525A(5) (West, Westlaw through 2018 2d Reg. Sess.); 730 ILL. COMP. STAT. 5/3-3-2(a)(10)(D)(x) (West, Westlaw through P.A. 100–607 of 2018 Reg. Sess.); IND. CODE ANN. § 35-38-9-3(b)(2) (West, Westlaw through 2018 2d Reg. Sess. and 1st Special Sess.); KY. REV. STAT. ANN. § 529.160(1) (West, Westlaw through laws effective July 14, 2018); LA. CODE CRIM. PROC. ANN. art. 978(B)(1) (West, Westlaw through 2018 1st Extraordinary Sess.); MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-27.1(c)(6)(i) (West, Westlaw through legislation effective July 1, 2018, Reg. Sess.); CRIM. PROC. § 10-105(a)(8)(i); MISS. CODE ANN. § 99-19-71(2)(b) (West, Westlaw through 2018 Reg. Sess.); N.H. REV. STAT. ANN. § 651:5(V) (West, Westlaw through Ch. 334 of the 2018 Reg. Sess.); N.Y. CRIM. PROC. LAW § 160.59(1)(a) (McKinney through L. 2018, Chs. 1 to 120); N.C. GEN.

offenders are not categorically barred from these opportunities, they are apt to face longer waiting periods before they can apply.[218]

A few states offer former offenders an opportunity to apply for a certificate of rehabilitation or restoration of rights, which can help to offset the stigma of a conviction.[219] However, when the conviction is for an offense classified as "violent," the opportunity is often not available.[220] Similarly, the rules for executive pardons can also be less favorable for violent offenders.[221] And in one state that provides a process by which a person can have a felony conviction reduced to a misdemeanor after a certain waiting period, the statute specifically excludes anyone who is a "violent offender."[222]

These patterns also hold for juveniles. Traditionally, juvenile delinquency adjudications have been treated as confidential matters and shielded from public access so as to minimize the risk of long-term stigma for the juvenile.[223] However, if the adjudication is for an offense classified as "violent," the confidentiality protections may be much less or even nonexistent.[224]

STAT. ANN. § 15A-145.5(c) (West, Westlaw through the end of 2017 Reg. Sess.); 12 R.I. GEN. LAWS ANN. § 12-1.3-2(a) (West, Westlaw through Ch. 112, Jan. 2018 Sess.); WASH. REV. CODE §§ 9.94A.640(2), 9.96.060(2)(b) (West, Westlaw through all effective legislation of 2018 Reg. Sess.); WIS. STAT. ANN. § 973.015(1m)(a)(3) (2016); WYO. STAT. ANN. §§ 7-13-1502(a)(iv)(A), 14-6-241(a) (West, Westlaw through the 2018 Budget Sess.).

[218] *See* DEL. CODE ANN. tit. 10, § 1018(a) (setting forth various waiting periods for expungement of juvenile records; longer waiting periods apply to violent offenses); NEV. REV. STAT. ANN. § 179.245(1)(a) (West, Westlaw through end of 79th Reg. Sess. (2017)) (requiring person convicted of violent crime to wait at least ten years before sealing).

[219] *See, e.g.*, NAT'L ASS'N CRIM. DEFENSE LAWYERS, *supra* note 53, at 54 (describing New York's Certificates of Relief from Disabilities and Certificates of Good Conduct).

[220] *See* MD. CODE ANN., CORR. SERVS. § 7-104(a)(1)(i) (West, Westlaw through legislation effective July 1, 2018, Reg. Sess.); VA. CODE ANN. § 53.1-231.2(i) (West, Westlaw through end of 2018 Reg. Sess.); WYO. STAT. ANN. § 7-13-105(b).

[221] *See* CONN. GEN. STAT. ANN. § 54-124a(j)(2) (West, Westlaw through Public Acts effective July 1, 2018) (establishing expedited pardons review process for applicants who were convicted of *nonviolent* crime); MINN. STAT. ANN. § 638.02(2) (West, Westlaw through laws effective July 1, 2018, Reg. Sess.) (establishing ten-year waiting period for individuals convicted of "crime of violence"; otherwise, waiting period is five years).

[222] IND. CODE ANN. § 35-50-2-7(d)(1).

[223] McMullen, *supra* note 88, at 9.

[224] *See* CAL. WELF. & INST. CODE § 827.6 (West, Westlaw through Ch. 119 of 2018 Reg. Sess.) (establishing distinct rules for release of information regarding "minor alleged to have committed a violent offense"); COLO. REV. STAT. § 19-1-304(5), (5.5) (2015) (requiring notification of allegations of "crime of violence" to be given to juvenile's school district and, in some circumstances, school principal; permitting public release of certain information about these cases); § 16-22-112(2)(b)(III) (permitting local law enforcement agencies to post on their websites sex offender registration of a "juvenile with a second or subsequent adjudication

One of the most powerful mechanisms by which sex offenders have been stigmatized in recent years has been through registration and community notification laws. These laws require sex offenders to provide government authorities with regularly updated personal information, including work and home addresses; this information is then shared through public websites and by other means.[225] Increasingly, such laws are now being extended from sex to violent offenders,[226] or being made more draconian when a person has both a sex and a violence conviction.[227]

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involving unlawful sexual behavior or for a crime of violence"); FLA. STAT. § 985.04 (4)(a) (West, Westlaw through 2018 2d Reg. Sess.) (requiring notification of school superintendent when juvenile arrested for violent crime); § 985.047(2)(b) (requiring notice to law enforcement of relocation of juvenile "who has been adjudicated or had adjudication withheld" for violent crime); LA. CHILD. CODE ANN. art. 879(B)(1) (West, Westlaw through 2018 1st Extraordinary Sess.) ("All proceedings in a juvenile delinquency case involving a crime of violence . . . shall be open to the public."); MINN. STAT. ANN. § 260B.171(9)(3) (restricting electronic access to juvenile delinquency records, but making exception when juvenile adjudicated delinquent for violent crime); N.H. REV. STAT. ANN. § 169-B:36(II) (West, Westlaw through Ch. 334 of the 2018 Reg. Sess.) (permitting court clerk to disclose certain information regarding juvenile violent crime cases); VA. CODE ANN. § 16.1-301(A) ("[L]aw-enforcement records concerning a juvenile . . .] shall not be open to public inspection nor their contents disclosed to the public unless a juvenile 14 years of age or older is charged with a violent juvenile felony . . . ."); § 16.1-309.1(H) (requiring reporting to Bureau of Immigration and Customs Enforcement of juvenile detained based on allegation of violent felony if juvenile believed to be in United States illegally); WYO. STAT. ANN. § 14-6-243 (West, Westlaw through the 2018 Budget Sess.) (prohibiting court clerk from disclosing names of juvenile offenders "unless the offender was adjudicated delinquent for commission of a violent felony").

[225] Wayne A. Logan, *Sex Offender Registration and Notification*, ACADEMY FOR JUSTICE, A REPORT ON SCHOLARSHIP AND CRIMINAL JUSTICE REFORM, at 397–98 (Erik Luna ed.).

[226] *See* FLA. STAT. § 775.261(3)(a) (subjecting "career offender[s]" to registration and notification provisions; (2)(a) defines "career offender" to include "any person who is designated as a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender"); IND. CODE ANN. § 11-8-8-19(a) (West, Westlaw through 2018 2d Reg. Sess. and1st Special Sess.) (establishing general ten-year registration period for individuals who qualify as "violent offender"); MONT. CODE ANN. § 41-5-1513(1)(c) (West, Westlaw through the 2017 Sess.) (authorizing court to order delinquent youth to register as violent offender); § 46-23-504(1) (requiring "violent offender" to register within certain time limitations); OKLA. STAT. ANN. tit. 57, § 594(A) (West, Westlaw through legislation effective July 1, 2018, 2d Reg. Sess.) (establishing timing requirements under violent crime offenders registration law); WASH. REV. CODE § 9.41.330(3)(c) (West, Westlaw through all effective legislation of 2018 Reg. Sess.) (requiring registration as part of sentence when person convicted, or found not guilty by reason of insanity, of felony firearm offense committed in conjunction with "serious violent offense").

[227] *See* DEL. CODE ANN. tit. 11, § 4121 (West, Westlaw through 81 Laws 2018, Chs. 200–271) (excluding sex offenders from relief from registration requirement if they have prior violent crime conviction).

Many other CVCs have implications for privacy and stigma. For instance, in several states, violent offenders are required to provide DNA samples.[228] Other CVCs affect the retention of criminal case records,[229] require a special identifying code on drivers' licenses,[230] mandate the disclosure of an applicant's criminal history to a prospective residential care home,[231] and diminish the confidentiality of mental health records.[232]

3. Parenting-Related CVCs

CVC laws can even affect parent-child relationships, with several states prohibiting individuals with a violence conviction from adopting or becoming a foster parent.[233] Additionally, in some states, violent offenses are recognized as a ground for terminating existing parental relationships.[234]

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[228] *See* COLO. REV. STAT. § 16-11-102.4(1)(b)(I)(C); MD. CODE ANN., PUB. SAFETY § 2-504(a)(3)(i)(1) (West, Westlaw through legislation effective July 1, 2018, 2d Reg. Sess.); MISS. CODE ANN. § 45-47-1(1) (West, Westlaw through 2018 Reg. Sess.); MONT. CODE ANN. § 44-6-103(1); TENN. CODE ANN. § 40-35-321(e)(1) (West, Westlaw through laws effective June 30, 2018, 2d Reg. Sess.); VA. CODE ANN. § 19.2-310.2:1 (West, Westlaw through end of 2018 Reg. Sess.); WIS. STAT. ANN. § 165.84(ah) (2016).

[229] *See* ARK. CODE ANN. § 14-2-204(a)(1) (West, Westlaw through laws effective July 1, 2018, Fiscal Sess. and 2d Extraordinary Sess.) (requiring police files for violent crimes to be preserved permanently); VA. CODE ANN. § 17.1-213(C)(3) (requiring criminal case files generally to be preserved for twenty years, but fifty years for a "violent felony" or "an act of violence").

[230] S.C. CODE ANN. § 56-1-148 (West, Westlaw through 2018 Act 226).

[231] HAW. REV. STAT. ANN. § 321-15.3(1) (West, Westlaw through Act 115 of 2018 Reg. Sess.).

[232] WASH. REV. CODE § 70.02.260(1)(a)(ii)(B) (West, Westlaw through all effective legislation of 2018 Reg. Sess.).

[233] *See* ARK. CODE ANN. § 9-28-116(c)-(d); CAL. FAM. CODE § 8908(c)(1) (West, Westlaw through Ch. 119 of 2018 Reg. Sess.); 20 ILL. COMP. STAT. 505/5(v-1) (West, Westlaw through P.A. 100–607 of 2018 Reg. Sess.); MINN. STAT. ANN. §§ 259A.10(4)(a)(1)(iv), 609B.445 (West, Westlaw through laws effective July 1, 2018, Reg. Sess.); N.Y. DOM. REL. LAW § 115-d.3-a(b)(i)-(ii) (McKinney through L. 2018, Chs. 1 to 120); SOC. SERV. LAW § 378-a(2)(e); N.D. CENT. CODE ANN. § 50-11.3-02 1(a)(4) (West, Westlaw through 2017 Reg. Sess.); OKLA. STAT. ANN. tit. 10, § 7505-5.1(C)(4) (West, Westlaw through legislation effective July 1, 2018, 2d Reg. Sess.). CVCs can also affect one's eligibility to serve as an emergency placement for a child in need of protection, MONT. CODE ANN. § 41-3-304(6) (West, Westlaw through the 2017 Sess.), or as a guardian, MD. CODE ANN., EST. & TRUSTS § 11-114(a)(2) (West, Westlaw through legislation effective July 1, 2018, Reg. Sess.); *cf.* LA. CODE CRIM. PROC. ANN. art. 4231(C) (West, Westlaw through 2018 1st Extraordinary Sess.) (disqualifying parent with conviction for felony "crime of violence" from serving as minor child's "tutor," a role in Louisiana law that is analogous to guardianship).

[234] *See* FLA. STAT. § 39.806(1)(d)(2) (West, Westlaw through 2018 2d Reg. Sess.); MONT. CODE ANN. § 42-2-608(1)(g); VT. STAT. ANN. tit. 15A, § 3-504(a)(3) (West, Westlaw through Adjourned Sess. acts effective June 1, 2018). Similarly, California precludes state assistance in reuniting a child with a parent or guardian if the parent or guardian has been convicted of

4. Possession of Firearms and Similar Items

A large number of CVCs affect the ability of violent offenders to possess firearms and other devices that are dangerous or could otherwise be used to facilitate future crimes. Of course, under federal law, *any* felony conviction results in a loss of the defendant's right to possess a firearm.[235] However, when it comes to individuals who have been convicted of violent offenses, state laws supplement this federal gun prohibition in a variety of important ways. For instance, in several states, a violent *misdemeanor* results in at least a temporary bar to gun possession,[236] or affects the offender's eligibility for a concealed carry permit.[237] Additionally, in some states, a juvenile delinquency adjudication for a violent offense may also cause a loss of gun rights.[238] Indeed, in one state, it is enough that a person charged with a violent offense has avoided conviction by virtue of a finding of insanity.[239] In other states, a charge alone is enough to result in a loss of rights while the case is pending.[240] Additionally, in some states, the mechanisms that have

"violent felony." CAL. WELF. & INST. CODE § 361.5(b)(12) (West, Westlaw through Ch. 119 of 2018 Reg. Sess.).

[235] 18 U.S.C. § 922(g)(1) (2012).

[236] *See* HAW. REV. STAT. ANN. § 806-11(a); N.D. CENT. CODE ANN. § 62.1-02-01(1)(b); OR. REV. STAT. ANN. § 166.470(1)(g) (West, Westlaw through April 13, 2018, Reg. Sess.). Note that these state restrictions reach more broadly than the federal ban that is triggered by a misdemeanor crime of domestic violence. 18 U.S.C. § 922(g)(9).

[237] *See* ARK. CODE ANN. § 5-73-308(a)(1)(A)-(B) (West, Westlaw through laws effective July 1, 2018, Fiscal Sess. and 2d Extraordinary Sess.); FLA. STAT. § 790.06(3); LA. STAT. ANN. § 40:1379.3(C)(9) (West, Westlaw through 2018 1st Extraordinary Sess.); MISS. CODE ANN. § 45-9-101(3) (West, Westlaw through 2018 Reg. Sess.); MO. ANN. STAT. § 571.101(2)(4) (West, Westlaw through emergency legislation approved June 1, 2018, 2d Reg. Sess.); NEB. REV. STAT. ANN. § 69-2433(5) (West, Westlaw through legislation effective July 1, 2018, 2d Reg. Sess.); N.M. STAT. ANN. § 29-19-4(B)(1) (West, Westlaw through end of 2018 2d Reg. Sess.); N.C. GEN. STAT. ANN. § 14-415.12(b) (West, Westlaw through the end of 2017 Reg. Sess.); N.D. CENT. CODE ANN. § 62.1-04-03(1)(c)(2); UTAH CODE ANN. § 53-5-704(2)(a)(ii) (West, Westlaw through 2018 Gen. Sess.); WYO. STAT. ANN. § 6-8-104(c) (West, Westlaw through the 2018 Budget Sess.).

[238] *See* HAW. REV. STAT. ANN. § 134-7(d) (West, Westlaw through Act 115 of 2018 Reg. Sess.); MD. CODE ANN., PUB. SAFETY § 5-306(c)(2)(i) (West, Westlaw through legislation effective July 1, 2018, Reg. Sess.); MASS. GEN. LAWS ch. 140, § 129B(1)(i)(C) (West, Westlaw through Ch. 108 of 2018 2d Annual Sess.); MINN. STAT. ANN. § 260B.245(b).

[239] *See* OR. REV. STAT. ANN. § 166.470(1)(g).

[240] *See* HAW. REV. STAT. ANN. § 806-11(a); OHIO REV. CODE ANN. § 2923.13(A)(2) (West, Westlaw through File 84 of the 132d G.A. (2017–2018)); *cf.* LA. STAT. ANN. § 40:1379.3(C)(10) (as condition for concealed carry permit, requiring that applicant "not be charged under indictment or a bill of information for any crime of violence"); MD. CODE ANN., PUB. SAFETY § 5-114(a)(1)(i) (requiring suspension of firearm dealer's license if dealer under indictment for violent crime); MISS. CODE ANN. § 45-9-101(3) (barring concealed carry for

been established for felons to regain gun rights are limited to only those with *nonviolent* convictions.[241] Violent offenders may also face enhanced penalties when they violate gun laws.[242]

In addition to the loss of gun rights, violent offenders also face restrictions on their ability to possess body armor,[243] explosives,[244] tasers,[245] and self-defense spray.[246] A violence conviction may also affect a person's right to own a dog[247] or a snake,[248] to possess radio equipment in his or her car,[249] to have tinted car windows,[250] and to hunt with a bow and arrow. [251]

5. Other Collateral Consequences

A violence crime may carry many additional collateral consequences, including those affecting a person's ability to

- obtain government benefits,[252]

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person facing violent offense charge); TENN. CODE ANN. § 39-17-1352(e) (West, Westlaw through laws effective June 30, 2018, 2d Reg. Sess.) (same).

[241] *See* MINN. STAT. ANN. § 609.165(1a) (West, Westlaw through laws effective July 1, 2018, Reg. Sess.); N.C. GEN. STAT. ANN. § 14-415.4(b).

[242] *See* OHIO REV. CODE ANN. § 2923.132(C).

[243] *See* CAL. PENAL CODE § 31360 (West, Westlaw through Ch. 119 of 2018 Reg. Sess.); LA. STAT. ANN. § 14:95.3.A(1)(a) (West, Westlaw through 2018 1st Extraordinary Sess.); MD. CODE ANN., CRIM. LAW § 4-107 (West, Westlaw through legislation effective July 1, 2018, Reg. Sess.); MICH. COMP. LAWS ANN. § 750.227g(1) (West, Westlaw through P.A. 267-336 of 2018 Reg. Sess.); S.C. CODE ANN. § 16-3-1085(A) (West, Westlaw through 2018 Act 226); WIS. STAT. ANN. §§ 938.3415, 941.291 (2016).

[244] *See* LA. STAT. ANN. § 40:1472.3(E)(2); MD. CODE ANN., PUB. SAFETY § 11-107(b)(3) (West, Westlaw through legislation effective July 1, 2018, Reg. Sess.); MINN. STAT. ANN. § 299F.77(1)(2) (West, Westlaw through laws effective July 1, 2018, Reg. Sess.); S.C. CODE ANN. § 23-36-100(1)(b); WASH. REV. CODE § 70.74.360 (West, Westlaw through all effective legislation of 2018 Reg. Sess.).

[245] *See* MD. CODE ANN., CRIM. LAW § 4-109.

[246] *See* MASS. GEN. LAWS ch. 140, § 122D(i)(C) (West, Westlaw through Ch. 108 of 2018 2dAnnual Sess.).

[247] *See* GA. CODE ANN. § 4-8-27(f)(1) (West, Westlaw through 2018 Legis. Sess.); OHIO REV. CODE ANN. § 955.54(A) (West, Westlaw through File 84 of the 132d G.A. (2017-2018)); TENN. CODE ANN. § 39-17-1363 (West, Westlaw through laws effective June 30, 2018, 2d Reg. Sess.).

[248] *See* OHIO REV. CODE ANN. § 935.09(A)(3).

[249] *See* MINN. STAT. ANN. § 299C.37(1)(a).

[250] *See* LA. STAT. ANN. §§ 32:361.2(A)(3)(d)(i), 32:361.3(A) (West, Westlaw through 2018 1st Extraordinary Sess.).

[251] *See* 20 R.I. GEN. LAWS ANN. § 20-13-5(a)(2) (West, Westlaw through Ch. 112, Jan. 2018 Sess.).

[252] *See* GA. CODE ANN. § 49-4-184(a)(4); ME. STAT. tit. 22, § 3104(15) (West, Westlaw through Ch. 317 of 2018 Reg. Sess.).

- obtain compensation for a wrongful conviction,[253]
- obtain compensation as a crime victim,[254]
- obtain legal aid,[255]
- litigate a civil case,[256] and
- attend school.[257]

Finally, although this article focuses primarily on state CVCs, we should note at least one major federal collateral consequence: the Immigration and Nationality Act normally requires the deportation of aliens who have been convicted of a "crime of violence."[258]

F. SYNTHESIS

In order to appreciate how CVCs can pile up, a hypothetical illustration may help. Let's focus on Maryland—a state that is by no means an extreme outlier in its number of CVCs. "Carl," our hypothetical subject, has his first

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[253] *See* FLA. STAT. § 961.04(1), (3) (West, Westlaw through 2018 2d Reg. Sess.).

[254] *See* WASH. REV. CODE § 7.68.060 (West, Westlaw through all effective legislation of 2018 Reg. Sess.).

[255] *See* CAL. WELF. & INST. CODE § 13303(b)(3)(A)(i) (West, Westlaw through Ch. 119 of 2018 Reg. Sess.).

[256] *See* TENN. CODE ANN. § 40-35-313(c) (West, Westlaw through laws effective June 30, 2018, 2d Reg. Sess.) (permitting evidence of witness's violent felony conviction to be introduced for impeachment in civil case); WASH. REV. CODE § 9.94A.645 (West, Westlaw through legislation effective 2018 Reg. Sess.) (requiring violent offenders to obtain special permission before initiating civil action against victim or victim's family).

[257] *See* OKLA. STAT. ANN. tit. 70, § 24-101.3(F)(1) (West, Westlaw through legislation effective July 1, 2018, 2d Reg. Sess.) (relieving public schools of duty to "provide education services in the regular school setting" to student who has been convicted or adjudicated as delinquent for violent crime). Similarly, in Texas, students below third grade can be placed in out-of-school suspension for committing a violent offense. TEX. EDUC. CODE ANN. § 37.005(c)(2) (West, Westlaw through the end of 2017 Reg. and 1st Called Sess.).

[258] *See* 8 U.S.C. § 1227(a)(2)(A)(iii) (2012) (providing for deportation of aliens convicted of "aggravated felony"); 8 U.S.C. § 1101(a)(43)(F) (2012) (including "crime of violence . . . for which the term of imprisonment is at least one year" within the definition of "aggravated felony"). The Supreme Court has found similar vagueness problems here as it did with the ACCA. Session v. Dimaya, 138 S. Ct. 1204, 1210 (2018). More specifically, the Court struck down one part of the relevant statutory definition of "crime of violence," the so-called "residual clause" contained in 18 U.S.C. § 16(b). However, another portion of the definition, the "elements clause" of 18 U.S.C. § 16(a), was not affected by *Dimaya*. *See* 138 S. Ct. at 1211 ("Section 16(b), the residual clause, is the part of the statute at issue in this case."). Thus, the deportation CVC remains part of federal law, albeit with a somewhat narrower reach.

Further as to deportation, in California, law enforcement agencies are prohibited from providing certain types of cooperation to immigration authorities, but an exception is recognized as to individuals who have been convicted of a violent felony. CAL. GOV. CODE § 7282.5(a)(1) (West, Westlaw through Ch. 119 of 2018 Reg. Sess.).

entanglement with the criminal justice system at age sixteen when he and two other friends impulsively decide to steal a classmate's new smartphone; Carl's friends hold the victim while Carl snatches the phone. However, a school security officer observes the altercation and arrests the perpetrators. Carl is then prosecuted and convicted of robbery as an adult.[259] He is sentenced to a short term of confinement.

Due in part to the disruptions caused by his confinement, Carl drops out of high school and starts to use drugs. He then becomes involved in selling in order to support his own habit. At age nineteen, he experiences his second arrest, this time for distribution of a small amount of cocaine. This is a wake-up call for Carl, who realizes he needs to get treatment for his addiction. His lawyer discusses the possibility of a diversion with the prosecutor. Maryland law does provide prosecutors with an option to dismiss charges conditioned on the defendant's undergoing drug treatment.[260] However, Carl is not eligible because he has a conviction for a "crime of violence" in the past five years.[261] The new case thus moves forward, and Carl is convicted. He is again sentenced to a short stint behind bars, where his drug problems go unaddressed.

Upon release, Carl looks for work, but struggles to find anything because of his criminal record. He ends up in a dead-end, minimum-wage job. After a few months of trying to stay on the straight and narrow, he falls back into old associations and starts using drugs again. He also moves in with a girlfriend, and they have a child. It is hard to make ends meet.

Knowing of a "fence" who will pay a decent price for stolen goods, Carl is always on the lookout for theft opportunities in his neighborhood. One evening, he notices a man and woman leaving their home with a young child. The house appears to be dark and empty. He decides to slip around back to see if he can gain entry. There is an unlocked door. Looking around inside, Carl finds a jewelry box in a bedroom, which he takes. Just then, however, the family unexpectedly returns. Carl ends up in a tussle with the man, eventually shoving him aside to get away. The woman recognizes Carl from

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[259] *See* MD. CODE ANN., COURTS & JUD. PROC. § 3-8A-03(d)(4)(vi) (West, Westlaw through legislation effective June 1, 2018, from the 2018 Reg. Sess.) (indicating that robbery charge against sixteen-year-old cannot be prosecuted in juvenile court without order of removal).

[260] MD. CODE ANN., CRIM. PROC. § 6-229(c)(1) (West, Westlaw through legislation effective June 1, 2018, from the 2018 Reg. Sess.).

[261] § 6-229(a)(2). The statute indicates that the relevant definition of "crime of violence" is found in § 14-101 of the Criminal Law Article, which includes robbery. MD. CODE ANN., CRIM. Law § 14-101(a)(9) (West, Westlaw through legislation effective June 1, 2018, from the 2018 Reg. Sess.).

the neighborhood, though, and is able to provide information to the police that leads to his arrest. Carl once again faces a robbery charge.

Unlike in his earlier cases, Carl finds that he is unable to gain pretrial release. With a current charge and a prior conviction for a "crime of violence," Carl is subject under Maryland law to a presumption that, if released, he will "flee and pose a danger to another person or the community."[262] The judge thus denies his request for bail.

Despite this setback, Carl is initially determined to fight the charge. The jewelry box was never recovered, and Carl is optimistic that he can develop an alibi defense with the help of his girlfriend. He calls her from jail to tell her what she should say. When she expresses reluctance about lying, he threatens to "slap some sense" into her the next time he sees her. Unfortunately for Carl, the phone conversation is recorded by jail officials, who turn the tape over to the prosecutor.

The prosecutor is exasperated with Carl, first for trying to fight the charge and then for attempting to induce false testimony. She decides to throw the proverbial book at him. For an unarmed robbery, Carl would normally face a sentence of up to fifteen years in prison, with no minimum.[263] But the prosecutor is able to inflate his sentencing exposure in three different ways based on the fact that robbery counts as a "crime of violence." First, she charges him as a "subsequent offender": since this would be Carl's second conviction for a crime of violence and since he served a term of confinement for the first, he is subject to a subsequent offender statute that includes a mandatory minimum prison term of ten years.[264] Second, upon notice by the prosecutor, he is subject to an additional sentence enhancement for committing a crime of violence knowing "that a minor who is at least 2 years old is present in a residence."[265] This increases the maximum potential sentence for Carl by five years.[266] Finally, Carl is charged with obstruction of justice. The normal maximum penalty for attempting to induce false testimony through threats of harm is five years, but the exposure balloons to twenty years if the underlying offense that is being covered up counts as a "crime of violence."[267] In sum, Carl now faces a minimum of ten years and a maximum of forty years.

As the weeks drag by and Carl remains stuck in jail, he learns that he has been fired from his job, that his girlfriend has moved in with another man,

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[262] CRIM. PROC. § 5-202(c)(3).
[263] CRIM. LAW § 3-402(b).
[264] § 14-101(d).
[265] § 3-601.1(a)(1).
[266] § 3-601.1(b).
[267] § 9-302(c).

and that he has been evicted from his apartment. Despondent and cowed by the enormous potential sentence hanging over his head, Carl instructs his lawyer that he is ready to plead guilty to practically anything; "let's just get it over with." Ultimately, the prosecutor agrees to drop the other enhancements if Carl pleads guilty to robbery and obstruction of justice. The deal completed, the judge imposes concurrent prison terms of twelve years on each count, with four years of each sentence suspended, leaving an initial confinement period of eight years.

Normally, a Maryland inmate is eligible for parole release after serving one-quarter of the confinement term, or, in Carl's case, two years.[268] However, when a prisoner has been sentenced for a violent crime, he or she must wait until at least half the term for the violent crime has been served.[269] That would put off Carl's eligibility for another two years. Additionally, while other prisoners can take advantage of an expedited administrative release process once they reach the parole eligibility threshold, Carl would be precluded from this by virtue of his prior conviction for a violent crime.[270] Moreover, while most Maryland prisoners can earn a right to early release through "diminution credits,"[271] which are based on good conduct and participation in work and rehabilitative programs,[272] violent offenders like Carl accrue these credits at a much reduced rate.[273] As a result of all of these various CVCs, Carl will likely have to serve a much larger percentage of his prison term than is typical for those inmates who are not in the violent category.

Once Carl finally does gain release from prison to community supervision, his life may still be affected in important ways by additional CVCs. He would be excluded from the opportunity to reduce his period of supervision through "earned compliance credits."[274] Additionally, while

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[268] MD. CODE ANN., CORRECTIONAL SERVS. § 7-301(a)(2) (West, Westlaw through legislation effective June 1, 2018, from the 2018 Reg. Sess.).

[269] § 7-301(c)(1)(i).

[270] § 7-301.1(a)(3)(iii).

[271] § 7-501(a).

[272] § 3-704-07.

[273] Carl would gain credit for good conduct at a rate of only five days per month, as opposed to the general rate of ten days per month. § 3-704(b). He would similarly earn credits for participating in work and rehabilitative programs at a reduced rate. § 3-707(a)(2)(i). Additionally, Maryland law specifies that violent offenders cannot use diminution credits to obtain release prior to their parole eligibility. § 7-501(a).

[274] *See* § 6-117(a)(4)(ii), (c)(1) (defining "supervised individual" to exclude individuals convicted for a "crime of violence"; "the Maryland Parole Commission or the court shall adjust the period of a supervised individual's supervision on the recommendation of the Division of Parole and Probation for earned compliance credits accrued under a program created under this section").

most offenders who are revoked and returned to prison get sentence credit for the time they have spent on community supervision, an individual is denied this credit if he or she was serving a sentence for a violent crime and revoked due to a finding of a new violent crime.[275]

And then there are the employment consequences. For instance, Carl could not be hired to work in a school by virtue of his conviction for a crime of violence.[276] Moreover, while Maryland generally prohibits the denial of an occupational license based solely on an applicant's criminal record, this sort of categorical official discrimination is permitted when the applicant's record includes a crime of violence.[277]

Carl may do well in prison and during his subsequent community supervision, perhaps finally getting the drug treatment he needs, obtaining a GED, and acquiring new job skills. He may never commit another crime for as long as he lives. However, his violence convictions will prove difficult, if not impossible, ever to fully leave behind. There is no mechanism under Maryland law for him to have his record sealed or expunged. There is an opportunity for *some* former offenders in the state to gain an official "certificate of rehabilitation," but this is closed to Carl because of his violence conviction.[278] The statute's statement of legislative purpose is telling: "It is the policy of the State to encourage the employment of *nonviolent* ex-offenders and remove barriers to their ability to demonstrate fitness for occupational licenses or certifications required by the State."[279] It is not clear, though, why the state should be any less interested in supporting the rehabilitation of people like Carl.

IV. CONCERNS WITH CVCS

Broadly speaking, the normative concerns regarding CVCs fall into three categories: fair notice, proportionality, and efficacy. Although a full consideration of these concerns lies beyond the scope of this article, the basic points emerge in a straightforward way from our survey of the CVC labyrinth.

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[275] § 7-401(3).

[276] MD. CODE ANN., EDUC. § 6-113(a)(3) (West, Westlaw through legislation effective June 1, 2018, from the 2018 Reg. Sess.).

[277] MD. CODE ANN., CRIM. PROC. § 1-209(b) (West, Westlaw through legislation effective June 1, 2018, from the 2018 Reg. Sess.).

[278] MD. CODE ANN., CORRECTIONAL SERVS. § 7-104(a)(1)(i) (West, Westlaw through legislation effective June 1, 2018, from the 2018 Reg. Sess.).

[279] § 7-104(b).

A. FAIR NOTICE

Fair notice has been at the center of the constitutional controversy surrounding one CVC, the federal Armed Career Criminal Act. A portion of the statutory definition of "violent felony" in that law was so indeterminate that the Supreme Court declared it unconstitutional—defendants lacked fair warning as to whether their prior convictions could be used to trigger the ACCA's fifteen-year mandatory minimum.[280] Yet, as we saw in Part I above, vague language echoing that found in the federal law also appears in a great many state CVC statutes—sometimes constituting the whole of the definition of what counts as a violent crime, sometimes appearing in a residual clause in a hybrid definition, and sometimes used even in laundry-list statutes in order to cover out-of-state convictions.[281]

Moreover, indeterminate definitional language constitutes only one dimension of the fair-notice problem. Even when a definition is clear on its face—e.g., in the statutes that simply list a set of criminal code citations as the meaning of violent crime—this seeming clarity is of little value to defendants who do not even suspect that the statute exists and needs to be consulted. Moreover, concerns should be heightened in light of the unexpectedly broad reach of many CVCs, which can be triggered by offenses that are not normally considered violent, by misdemeanors, by juvenile adjudications, by charges alone, by findings of not guilty by reason of insanity, by expunged convictions, and by very old convictions.

Nor can counsel be counted on to provide defendants with adequate notice. For one thing, the typically overstretched, under-resourced defense lawyer may not even be aware of all of the potential consequences of a conviction—an unfortunate reality that the Supreme Court has had to confront in a recent line of cases on the constitutional right to effective

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[280] Johnson v. United States, 135 S. Ct. 2551, 2557 (2015).

[281] To be sure, the similarity between the ACCA's unconstitutional residual clause and the language found in many state statutes does not necessarily mean that the state laws must also be overturned on vagueness grounds. Indeed, in *dicta* in *Johnson*, the Court suggested two considerations that might serve to distinguish the ACCA from its state counterparts. First, in the ACCA, in contrast to most of the state enactments, the qualitative definitional language is linked to a "confusing list of examples." *Id.* at 2561. Second, while the ACCA requires courts to determine categorically whether an offense fits within the residual clause, most of its state counterparts permit a case-by-case determination of whether a person committed an offense in a way that fits the relevant qualitative definition. *Id.* However, even though state qualitative definitional language may pass constitutional muster, that does not necessarily eliminate notice concerns. Notice may be sufficient in the minimal way that the Constitution requires, but still fall short of fairness in a more practical sense.

assistance of counsel.[282] For another, many CVCs are applied retroactively to old convictions; even the most diligent lawyer cannot be expected to predict the as-yet-unenacted consequences that will follow from a conviction.[283]

B. PROPORTIONALITY

While proportionality in punishment—that is, making the punishment fit the crime—has long been recognized as an important overriding objective for the criminal justice system,[284] CVCs operate contrary to this goal by imposing the same consequences in an indiscriminate fashion on a wide array of dissimilar offenses. Given the obvious practical and ethical difficulties of "eye-for-an-eye" proportionality, most contemporary punishment theorists favor *ordinal* over *cardinal* conceptions of proportionality.[285] On this view, proportionality is achieved by ensuring that the relative severity of punishment for different offenses corresponds to the relative severity of the offense. Thus, all else being equal, murder sentences should be longer than aggravated assault sentences, aggravated assault sentences longer than simple assault sentences, and so forth. Yet, CVCs tend to have a leveling effect, diminishing or potentially even erasing the practical differences in the severity of sanctions for quite different offenses. The broader the definition of "violent crime" and the more severe the consequences that flow from it, the more likely it is that proportionality will be undermined.

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[282] *See* Lee v. United States, 137 S. Ct. 1958, 1969 (2017) (holding that defendant entitled to relief based on lawyer's failure to advise him that guilty plea would result in deportation); Padilla v. Kentucky, 559 U.S. 356, 359 (2010) (holding that lawyer provided constitutionally deficient assistance in failing to advise defendant of deportation consequence of guilty plea).

[283] The *Ex Post Facto* Clause imposes few constraints on CVC retroactivity. *See, e.g.*, Smith v. Doe, 538 U.S. 84, 105–06 (2003) (upholding the sex offender registration law against *Ex Post Facto* challenge because not punitive); Monge v. California, 524 U.S. 721, 728 (1998) ("An enhanced sentence imposed on a persistent offender thus 'is not to be viewed as either a new jeopardy or additional penalty for the earlier crimes' but as 'a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one.'" (quoting Gryger v. Burke, 334 U.S. 728, 732 (1948)).

[284] *See, e.g.*, Russell L. Christopher, *Deterring Retributivism: The Injustice of "Just Punishment,"* 96 NW. U. L. REV. 843, 892 (2002) ("[T]hat punishment should be in some way proportional to the crime is an intuition (like the wrong of punishing the innocent) that is so widely shared as to make its attack unpersuasive."). As a theoretical matter, the proportionality principle is most closely associated with retributive approaches to punishment, but some scholars have also defended proportionality on utilitarian grounds. *See, e.g.*, Paul H. Robinson & John M. Darley, *The Utility of Desert*, 91 NW. U. L. REV. 453, 457 (1997) (arguing that desert-based sentences enhance public respect for the legal system and thereby promote utilitarian crime-control objectives).

[285] Michael M. O'Hear, *Beyond Rehabilitation: A New Theory of Indeterminate Sentencing*, 48 AM. CRIM. L. REV. 1247, 1255 (2011).

Consider, for instance, that Maryland ten-year mandatory minimum for a second "crime of violence."[286] Carl, our hypothetical offender from Part III, was subject—but for a plea deal—to this ten-year sentence on the basis of two unarmed robberies resulting in no physical injuries, at least one of which arguably should be regarded as quite low in culpability because of his age at the time (sixteen). An older two-time *armed* robber who created far greater danger and caused far more harm would face the same minimum. Even more stark violations of the proportionality principle are not hard to imagine, especially in connection with the most expansive CVCs that lump together core violent offenses with property or drug offenses, felonies with misdemeanors, adult convictions with juvenile adjudications, and so forth.

Moreover, while we normally think of proportionality in relation to the length of prison terms, the impact of collateral consequences should not be disregarded—these can severely constrain life prospects for many years after the completion of a sentence. Indeed, with probation and relatively short jail terms the norm even in most felony cases,[287] collateral consequences may prove to be the sanctions that are the most significant to many defendants over the long run. When these sanctions are distributed indiscriminately on the basis of broad definitions of violent crime, proportionality may be seriously undermined.

Another dimension of the proportionality problem relates to the risk of wrongful convictions. In a sense, wrongful convictions represent the most extreme form of disproportionality—after all, *any* punishment would be more severe than what the wrongfully convicted defendant deserves. Unfortunately, CVCs can significantly increase the risk that an innocent person will be convicted, especially via a guilty plea. Our Maryland hypothetical illustrates the key dynamics: protracted pretrial detention, which can result from the operation of a CVC, can leave a defendant desperate for resolution of his or her case—even if that means pleading guilty to a crime that he or she did not commit—while the inflated sentencing exposure created by other CVCs can also dramatically escalate the pressure on a defendant to accept practically any plea deal that is offered without regard to guilt.[288] In the hypothetical, we assumed that Carl was indeed guilty of the

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[286] MD. CODE ANN., CRIM. LAW § 14-101(d) (West, Westlaw through legislation effective June 1, 2018, Reg. Sess.).

[287] *See, e.g.*, BRIAN A. REAVES, U.S. DEP'T OF JUSTICE, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2009 — STATISTICAL TABLES 29 (2013) (estimating that 33% of defendants convicted of a felony in large urban counties in 2009 received a jail sentence, while 25% received probation or another nonincarcerative sentence).

[288] Although it can be hard for laypeople to accept that an innocent person would ever plead guilty, there is no shortage of anecdotal evidence that this does happen. For a discussion of illustrative cases, *see* John H. Blume & Rebecca K. Helm, *The Unexonerated: Factually*

second robbery, but, if the eyewitness identification of him as the perpetrator had been mistaken, there is little assurance that he would have reached any more favorable of an outcome.

C. EFFICACY

CVCs are adopted primarily in the name of public safety,[289] but their severity and tendencies to overbreadth raise concerns about their efficacy. Despite popular perceptions to the contrary, it is important to appreciate that individuals who have been convicted of violent offenses—even of core violent offenses like rape and robbery—are not categorically more dangerous than other offenders. Consider the data on prisoner recidivism. The United States Department of Justice's Bureau of Justice Statistics (BJS) tracked the performance of prisoners released in thirty states in 2005.[290] Dividing the prisoners into four categories (violent, property, drug, and public order), the BJS found that those who had been convicted of violent crimes actually had the *lowest* rates of reconviction for a new offense.[291]

Innocent Defendants Who Plead Guilty, 100 CORNELL L. REV. 157 (2014). Indeed, about 18% of recorded exonerations have come in guilty-plea cases. Jenia I. Turner, *Plea Bargaining, in* 3 REFORMING CRIMINAL JUSTICE: PRETRIAL AND TRIAL PROCESSES 73, 83 (Erik Luna ed., 2017). Moreover, empirical research is making increasingly clear that pretrial detention does create especially strong pressures for defendants to accept whatever plea deal is available. For instance, one recent study from New York City concludes:

> We find that pretrial detention increases the probability that a felony defendant will be convicted by at least 13 percentage points. . . . The increase in conviction rates is driven by detainees accepting plea deals more frequently. We also find evidence that detention increases minimum sentence length. In addition, individuals who are detained pretrial are less likely to obtain a reduction in the severity of the crimes with which they are charged.

Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence From New York City Arraignments*, 60 J. L. & ECON. 529, 531–32 (2017).

[289] *See, e.g.*, FLA. STAT. § 948.12 (West, Westlaw through the 2018 2d Reg. Sess.) ("It is the finding of the Legislature that the population of violent offenders released from state prison into the community poses the greatest threat to the public safety of the groups of offenders under community supervision.").

[290] MATTHEW R. DUROSE, ALEXIA D. COOPER & HOWARD N. SNYDER, U.S. DEPT. OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 (2014).

[291] *See id*. at 15 (indicating that five-year reconviction rate for violent offenders was 48%; for property offenders, 61.2%; for drug offenders, 56.3%; and for public order offenders, 54.2%). In addition to reconviction, the BJS study also reported results for five other measures of recidivism. *Id*. at 8, 15. Violent offenders had the lowest repeat-offending rate using each of these measures.

To be sure, not all new offenses are equally concerning. If offenders tend to specialize in certain types of crime, then we might still want to undertake special measures in order to

Because many of the individuals who are affected by CVCs are *not* high-risk offenders, there are good reasons to fear that many of the special measures intended to prevent them from reoffending may actually be counterproductive. For instance, research increasingly points to the likelihood that incarceration is criminogenic—that is, it *increases* recidivism risk—for many offenders.[292] Thus, to the extent that CVC laws are leading to the incarceration of low- and medium-risk individuals who could have been safely supervised in the community, these laws may be causing some of the offenders to become greater threats to public safety over the long run. Recall, too, that some CVCs involve the categorical exclusion of "violent" offenders from drug treatment courts and other rehabilitative programs that could help to reduce risk.[293] These laws further increase the likelihood that CVCs may have an overall negative impact of public safety.

Moreover, to the extent that CVCs make it harder for the affected individuals to obtain employment, housing, and the like, this may also serve to increase their risk. Unemployment and homelessness are known to be recidivism risk factors for returning prisoners.[294] While there has been limited research to date on the effect of collateral consequences on recidivism, some studies do point to a correlation between repeat-offending and some consequences, including employment restrictions.[295]

Other efficacy concerns flow from the fair-notice and proportionality problems discussed above. If CVC statutes aim to deter, they cannot do so effectively if individuals are not aware of the legal threats they face under these laws. Disproportionality, for its part, contributes to perceptions that the

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address the recidivism risks of those who have been convicted of violent crimes. Yet, the BJS data reveal little evidence of specialization. For instance, among the prisoners convicted of violent crimes who recidivated, public order offenses were far more common than fresh violent offenses. MATTHEW R. DUROSE, ALEXIA D. COOPER & HOWARD N. SNYDER, U.S. DEPT. OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010—SUPPLEMENTAL TABLES: MOST SERIOUS COMMITMENT OFFENSE AND TYPES OF POST-RELEASE ARREST CHARGES OF PRISONERS RELEASED IN 30 STATES IN 2005, tbl. 2 (2016). Indeed, violent recidivism was almost as common among the prisoners convicted of property and public order offenses as it was among those convicted of violent crimes. *Id.*

[292] COMM. ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION, NAT'L RESEARCH COUNCIL OF THE NAT'L ACADEMIES, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 193–95 (2014).

[293] *See supra* Part III.A.2.

[294] Susan Turner, *Reentry*, *in* 4 REFORMING CRIMINAL JUSTICE: PUNISHMENT, INCARCERATION, AND RELEASE 341, 350, 355 (Erik Luna ed., 2017).

[295] Tanya N. Whittle, *Felony Collateral Sanctions Effects on Recidivism: A Literature Review*, 29 (5) CRIM. J. POL'Y REV. 505, *7, *14 (forthcoming).

law and legal system are unfair; such perceptions can diminish respect for law and thereby undercut efforts to promote law-abidingness.[296]

No one would question that reducing the risk of violent recidivism is a salutary public-policy objective, but CVCs are a fundamentally misguided risk-reduction strategy. The fact that a person has been convicted of this or that particular offense, even if on more than one occasion, is a poor proxy for risk—especially when no consideration is given to other factors like the person's age at the time of conviction and the amount of time that has elapsed since the last conviction. Better risk-assessment tools are available.[297] If such tools were utilized to implement risk-control measures in more narrowly targeted ways, then better public-safety outcomes could likely be achieved at much less cost to offenders, their families, and society as a whole.

CONCLUSION: NEXT STEPS

CVCs have slowly accumulated in an ad hoc fashion in many state codes over a period of decades with no real attention to their coherence or overall impact. A reevaluation of these laws is long overdue.

A good next step would be for each state to build on the work of this article and develop a thorough catalog of its own CVCs, including—as well as can be ascertained—the full reach of its particular definition (or definitions) of violent crime. Although I have tried to identify all of the pertinent *statutes* in each state, a more complete catalog would also include administrative regulations, court rules, and federal law.[298] A state that has a sentencing commission might give the cataloging task to that body, recognizing that most CVCs either directly affect sentences or otherwise have an important bearing on the overall severity of punishment.[299] States

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[296] *See* Robinson & Darley, *supra* note 284, at 478 ("[E]very deviation from a desert distribution [of punishment] can incrementally undercut the criminal law's moral credibility, which in turn can undercut its ability to help in the creation and internalization of norms and its power to gain compliance by its moral authority.").

[297] For instance, a leading tool for assessing violent recidivism risk is the Violence Risk Appraisal Guide (VRAG). In its first iteration, the VRAG was developed by psychological researchers based on an analysis of about fifty variables and more than 600 offenders. GRANT T. HARRIS ET AL., VIOLENT OFFENDERS: APPRAISING AND MANAGING RISK 123, 125 (3d ed. 2015). Using multiple regression analysis to identify the variables with the greatest predictive power, the researchers ultimately developed a twelve-item instrument that includes not only criminal history, but also several psychosocial and other variables. *Id*. at 126–27. Subsequent research has confirmed that higher VRAG scores are indeed correlated with violent recidivism. *Id*. at 135.

[298] It might also be helpful to include in the catalog those consequences, omitted here, that specifically attach to "sexual violence," "domestic violence," and "gang violence."

[299] *Cf.* Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. ILL. L. REV. 1175, 1215 (2014) (recommending that existing sentencing commissions be given the

without a sentencing commission might find another existing agency with suitable expertise or create a special task force for this purpose.

A full catalog of CVCs might have benefits on two levels. First, the catalog would help to give practitioners a better awareness of the consequences of particular charges and convictions. This might diminish some of the fair-notice concerns with CVCs, as defense lawyers would be more easily able to identify pertinent consequences and convey the information to their clients. Conscientious judges might also do the same, for instance, before accepting a defendant's guilty plea. Moreover, with better information, prosecutors and judges could potentially exercise their power so as to avoid disproportionately severe outcomes. Prosecutors routinely make charging and plea-bargaining decisions that have important implications for CVCs, but they are not necessarily aware of all of those implications, especially as to corrections and collateral consequences—not matters over which prosecutors normally have direct responsibility. Judges are also apt to have significant gaps in their knowledge of these matters. A comprehensive catalog of CVCs could thus usefully inform the work of both of these key decision-makers.

Second, the catalog might also support policy reform. At a minimum, when new CVCs are proposed, it might help for policymakers to know the full weight of existing consequences. More ambitiously, one might hope that this information would spur a critical evaluation of current arrangements. Indeed, the body charged with creating the catalog might also be asked to supply reform recommendations.

Laying out a detailed reform agenda lies beyond the scope of this Article, but a number of possibilities seem to flow from the concerns sketched in Part IV above.[300] These possibilities include:

- Imposing time limits on the capacity of a conviction to trigger a CVC, preferably in the range of five to ten years after release from incarceration;
- Removing juvenile adjudications as a potential trigger of CVCs;
- Eliminating purely qualitative definitions of violent crime;
- Confining the definition of violent crime to the core assaultive felonies that are most clearly suggested by the term "violent"; and

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responsibility for taking stock of each state's "legal financial obligations," that is, fines, fees, and so forth).

[300] These reform ideas suggested here are further developed in a forthcoming article. *See* O'Hear, *supra* note 17.

- Establishing a process by which a person can obtain relief from a CVC by showing that the consequence is not appropriate in light of the degree and nature of the risk that he or she actually presents.

Is policy reform actually feasible? Violent offenders suffer deep stigma in our society, and elected officials will surely be reluctant to do anything that is seen as giving them a break. That is, of course, the very political dynamic that has driven the creation of CVCs. On the other hand, drug offenders were also deeply stigmatized not so long ago, but have benefitted from an extraordinary wave of reforms since 2000, including a vast proliferation of diversion opportunities, the repeal or narrowing of many mandatory minimums, and even the full-on legalization of marijuana in several states.[301] The basic argument in favor of such reforms has been that harshly punitive responses to drug use and distribution are both ineffective and very expensive, especially insofar as they have contributed to swollen prison budgets.[302] Yet, despite all of the changes in the way that drug crime is being handled in the United States, the nation's overall incarceration rate remains little reduced from its peak level of a decade ago.[303] In effect, much of the cost-saving from reduced *drug*-crime imprisonment has been offset by the impact of increased *violent*-crime imprisonment.[304] If policymakers wish to continue their efforts to reduce incarceration rates and corrections budgets, they will almost inevitably be led to reconsider the way that the law treats individuals who have been convicted of violent crimes—including through that messy network of CVCs that not only inflates the punishment of these individuals, but that also diminishes their prospects for rehabilitation.

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[301] For a more detailed account of this surprising history, see O'HEAR, *supra* note 22, ch. 2.

[302] *See, e.g.*, *id*. at 46 (noting arguments made in support of reforms in New York, Michigan, and California).

[303] *Id*. at xv.

[304] O'HEAR, *supra* note 22, at 173.