

Minor Crime Convictions Proving Harmful to Student Ambitions



by Reginald Stuart

When intern placement veteran Jacqueline Perkins begins counseling students at Florida A&M University about their prospects for getting well-paying, security-related jobs with the federal government, she confronts the 800-pound gorilla in the room—the question of whether a student has been convicted of or pleaded guilty to a misdemeanor.

As minor as a misdemeanor conviction or guilty plea appears at first (usually a small fine and no jail time), Perkins says it can live in government records forever, undermine the job prospects of otherwise stellar candidates and cause major damage to their long-term career aspirations.

“We are graduating a lot of students with a false sense of security,” says Perkins, internship director in FAMU’s Department of Sociology and Criminal Justice for more than a decade. Perkins, whose school places the most HBCU students in the Centralized Student Career Experience Program—a cooperative education program that prepares undergraduate students for Deputy U.S. Marshal positions—says too little is done to educate minority students about misdemeanors.

“We’re living in a time now when everything is competitive,” she says. “If an agency has to make a decision on a student who has some question on their background or one with a stellar background ... why would they hire the one with questions? Character and integrity (are) most important.”

Convictions or pleading guilty to misdemeanors—a catch-all classification of usually minor crimes ranging from disorderly conduct; driving with open containers of alcoholic beverages; possession of small amounts of marijuana; making fake IDs; littering; vandalism; writing worthless checks; public drunkenness; stealing food or lesser needs or wants; unauthorized duplication of copyrighted material; simple assault (such as getting into a fight); and similar offenses—can eliminate job prospects from pursuing a wide range of opportunities after graduation.

The federal government may not hire people with misdemeanor records for myriad permanent jobs that are security related in the FBI, Secret Service, IRS and U.S. Marshals Service. In many states a misdemeanor record can bar a person from representing a client in court or working as a doctor or dentist, depending on the nature of the offense. The same is true for many school districts when a job involves dealing with children or money on a regular basis.

Meanwhile, private employers of all stripes ask job applicants whether they have been convicted of a crime, not always initially asking for an explanation. Nearly all employers do background checks on applicants, even on job seekers looking for internships.

“It is not fair,” says former federal prosecutor David P. Baugh, a veteran criminal defense attorney in Richmond, Va., referring to how misdemeanor offenders are treated. “The child committing that offense will be different in five or 10 years. I’m not the man I was when I was 18.”

It's not just the employment line that narrows when a misdemeanor conviction becomes part of a student or graduate's history. Applying to college and getting campus housing can become complicated as a consequence of having committed a misdemeanor.

At Delaware State University, for example, it is standard procedure to ask all applicants for admission whether they have been convicted of a crime. If the applicant answers yes, the school requires detailed explanations of the offense. The application and explanation are referred to the school's admissions conduct review board for closer scrutiny.

"(The review board) will take it on a case-by-case basis," says Delaware State spokesman Carlos Holmes. "(The review panel) could admit with stipulations or decide it (the conviction) is frivolous and dismiss it." He adds that more stringent rules apply in cases where existing students at the school are convicted of committing a misdemeanor or worse offenses.

"We keep talking to the kids about this," says Holmes, who noted that the campus police chief joins other visible figures in talking with students about "what can happen if you are found in violation of the law."

Still, Holmes says, one must remember that the vast majority of the school's students are under 21. "Many students listen. Some forget, and some get caught up in the moment" of wild partying that can lead to fighting, destruction of property and disorderly conduct charges.

In Houston, at Texas Southern University, all applicants for on-campus housing are subjected to background checks to determine if they have criminal records. If a person is denied housing, the school is not authorized to disclose why. Again, as with regular admissions policies at most schools, housing applications that are flagged are reviewed on a "case-by-case" basis, says Mark Lambert, executive director of campus services and operations. Background checks are done each year that a student requests housing, he says.

Cause for Concern

Despite their widespread use by police to address any type of miscellaneous offense, there is little comprehensive national data on misdemeanors or their impact on college-bound or enrolled students or graduates seeking employment. One theme that seems consistent, however, is that minorities are arrested on misdemeanor charges far more frequently than non-minorities.

A 2007 study by the National Center for Juvenile Justice, the agency that analyzes government judicial data for the nation's juvenile courts, found Blacks were more than three times likely than Whites to be arrested on disorderly conduct charges. Blacks were 2.9 times more likely than Whites to be arrested on charges of curfew and loitering law violations, the study revealed.

Beyond those studies, data is scarce, say public and private agencies that track the judicial system.

"It's sort of the big unknown in the system," says Marc Mauer, executive director of the Washington, D.C.-based Sentencing Project, a nonprofit organization that studies inequities in sentencing laws. "In most states, employers can legally ask if you had an arrest, even if you have no conviction. One arrest can still have a ripple effect."

For example, several of those interviewed say it is hard to determine how many applicants for federal student aid to pay for college may have abandoned their pursuits after reading Question 23 on the FAFSA (Free Application for Federal Student Aid) form, which asks in revised language on the 2010 application if the applicant has been convicted of a drug crime while receiving federal student aid. Before this year, the question asked if the applicant had been convicted of a drug crime.

While federal financial aid applicants (most minority students seek federal financial aid to help pay for college) are asked to provide details about the offense(s), a yes answer may have scared some otherwise good students away from applying, some education officials say. The same is possible for students seeking internships or full-time jobs in government and at private companies when the “character” question, as it is called, is asked.

“Most of us have committed misdemeanors,” says Robert L. Smith, a Nashville attorney and assistant professor of criminal justice at Tennessee State University. “A traffic ticket is a misdemeanor.”

Smith worries that young Blacks and other minorities are not taking misdemeanor charges as seriously as they should, with the likelihood of small fines and little or no jail time giving those charged a false sense of security. Smith also fears some employers in states such as Tennessee, where labor laws allow employers to hire and fire “at will” with no explanation, may use minor crimes like misdemeanor offenses as a decoy reason for refusing to hire a person because of race, economic class or some other factor.

Smith says students should not take misdemeanor charges lightly. Some act as if a misdemeanor charge is a “rite of passage” and prize the notion of paying a small fine and not spending time in jail, he says. Others, unable to afford a lawyer, represent themselves and usually plead guilty to the charge, which usually involves only a small fine and no jail time. Get a lawyer, Smith says, even if it is a public defender.

“You should never go (to court) by yourself,” Smith says. “You should never take this lightly. Kids don’t know the consequences of a plea either. It’s permanent. A misdemeanor is not a death sentence. It’s a mistake in life. There are some employment areas where you can’t have anything on your record.”

Creating a Diversion

Smith and others say people facing misdemeanor charges have options.

“How many minority defendants are referred to diversion programs?” asks Walter Searcy, chairman of the Legal Redress Committee of the Nashville branch of the NAACP. Searcy says all states have some form of diversion programs by which the final disposition of a case is postponed for a fixed period of time so the person accused of the offense can comply with the court’s orders.

The programs vary, depending upon the offense, but could include restitution of funds or property, staying out of trouble during the postponement period, community service or formal apologies. If the judge’s terms are met, the case is usually dismissed and any record of the case is expunged from the public record.

“If you don’t have a lawyer and the district attorney doesn’t mention it or you don’t raise (a diversion program), it never comes up,” says Searcy, offering one reason why so many people of color and poor people plead guilty or are found guilty.

Outside court, in the employment arena, it’s important to come clean when asked about a previous arrest or conviction.

“If you try to conceal it, that’s where the problem comes in,” says Perkins. “Someone is going to investigate.”

There is a growing chorus of people who feel HBCUs could do more to educate students about the consequences of minor violations of the law and how to handle them, if faced with charges. This can be done, they say, while safely navigating the muddied Family Educational Rights and Privacy Act, protecting the interest of the larger “squeaky-clean” college community and the legal liability of the institutions themselves.

“I don’t think (HBCUs) have acknowledged it to be an issue,” says Smith. He says HBCUs should address issues like misdemeanors and more serious offenses “because of the historic mission of HBCUs” and family histories of many students attending the institutions. Schools need to go beyond reading the riot act at freshman orientation or sharing basic legal education in law-enforcement-related classes only.

Given the financial squeeze many schools find themselves in, Perkins says educators should try simple methods that cost no additional money, such as talking with students more often.

“Help them understand there are lessons in life beyond a book,” says Perkins, who suggests colleges educate students about life after college, background checks, legal rights and responsibilities. “That costs you five minutes. If it’s something you never mention to a person, it’s something they don’t consider. I don’t want to discourage anyone. I just want to say you won’t have as many choices.”

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