

116TH CONGRESS  
1ST SESSION

# S. 1338

To amend the Higher Education Act of 1965 to direct the Secretary of Education to issue guidance and recommendations for institutions of higher education on removing criminal and juvenile justice questions from their application for admissions process.

---

## IN THE SENATE OF THE UNITED STATES

MAY 7, 2019

Mr. SCHATZ (for himself, Mr. DURBIN, Mr. BOOKER, Mr. BLUMENTHAL, Mr. MARKEY, Ms. WARREN, Mr. CARDIN, Mr. MERKLEY, Ms. DUCKWORTH, Ms. CORTEZ MASTO, Mr. MURPHY, Ms. HARRIS, Mr. VAN HOLLEN, Mr. BROWN, Ms. KLOBUCHAR, Ms. BALDWIN, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

---

## A BILL

To amend the Higher Education Act of 1965 to direct the Secretary of Education to issue guidance and recommendations for institutions of higher education on removing criminal and juvenile justice questions from their application for admissions process.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Beyond the Box for  
5 Higher Education Act of 2019”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) An estimated 70,000,000 Americans have  
4 some type of arrest or conviction record that would  
5 appear in a criminal background check.

6 (2) Each year, more than 600,000 people re-  
7 turn to society from State or Federal prison.

8 (3) Nearly 11,000,000 Americans are admitted  
9 to city and county jails each year, with an average  
10 daily population of more than 700,000 people.

11 (4) An estimated 2,100,000 youth under the  
12 age of 18 are arrested every year in the United  
13 States.

14 (5) 1,700,000 juvenile delinquency cases are  
15 disposed of in juvenile courts annually.

16 (6) Juvenile records are not always confidential;  
17 many States disclose information about youth in-  
18 volvement with the juvenile justice system or do not  
19 have procedures to seal or expunge juvenile records.

20 (7) The compounding effects of collateral con-  
21 sequences due to criminal justice involvement hinder  
22 the ability of individuals to reenter society success-  
23 fully.

24 (8) People of color and low-income people are  
25 disproportionately impacted by the collateral con-  
26 sequences of criminal justice involvement.

1           (9) Incarceration leads to decreased earnings,  
2           unemployment, and poverty.

3           (10) Upon reentry, lower educational attain-  
4           ment, a lack of work skills or history, and the stig-  
5           ma of a criminal record can hinder a formerly incar-  
6           cerated person’s ability to return to their commu-  
7           nities successfully.

8           (11) One way to improve reentry outcomes is to  
9           increase educational opportunities for people with a  
10          criminal or juvenile justice history.

11          (12) By reducing rearrests and reconvictions,  
12          and by increasing educational attainment, formerly  
13          incarcerated individuals are better situated to find  
14          stable employment, contributing to their commu-  
15          nities.

16 **SEC. 3. BEYOND THE BOX FOR HIGHER EDUCATION.**

17          Part B of title I of the Higher Education Act of 1965  
18          (20 U.S.C. 1011 et seq.) is amended by adding at the end  
19          the following:

20 **“SEC. 124. BEYOND THE BOX FOR HIGHER EDUCATION.**

21          “(a) TRAINING AND TECHNICAL ASSISTANCE.—

22                  “(1) IN GENERAL.—The Secretary, acting  
23                  through the Office of Policy, Planning, and Innova-  
24                  tion of the Office of Postsecondary Education of the  
25                  Department and with consultation from the Depart-

1       ment of Justice and relevant community stake-  
2       holders, shall issue guidance and recommendations  
3       for institutions of higher education to remove crimi-  
4       nal and juvenile justice questions from their applica-  
5       tion for admissions process.

6               “(2) GUIDANCE AND RECOMMENDATIONS.—The  
7       guidance and recommendations issued under para-  
8       graph (1) shall include the following:

9               “(A) If an institution of higher education  
10       collects criminal or juvenile justice information  
11       on applicants for admission, it is recommended  
12       that the institution determine whether this in-  
13       formation is necessary to make an informed ad-  
14       mission decision and whether it would be appro-  
15       priate to remove these questions from the appli-  
16       cation.

17              “(B) If an institution of higher education  
18       determines that it is appropriate to remove  
19       criminal or juvenile justice questions from the  
20       institution’s application for admissions process,  
21       it is recommended that the institution comply  
22       with the following:

23              “(i) If criminal or juvenile justice  
24       questions are necessary for the other as-  
25       pects of the institution’s interactions with

1 applicants, identify those specific inter-  
2 actions in which it is appropriate to ask  
3 such questions.

4 “(ii) In non-admissions interactions,  
5 inquire about criminal or juvenile justice  
6 history transparently and clearly inform  
7 applicants as early as possible how to re-  
8 spond to the inquiry.

9 “(iii) In non-admissions inquiries  
10 about criminal or juvenile justice history,  
11 ensure the questions are specific and nar-  
12 rowly focused, and make it clear that an-  
13 swering the questions may not negatively  
14 impact applicants’ chances of enrollment.

15 “(iv) In non-admissions inquiries  
16 about criminal or juvenile justice history,  
17 give applicants the opportunity to explain  
18 criminal or juvenile justice involvement and  
19 preparedness for postsecondary study.

20 “(v) Provide staff of the institution  
21 who have access to a prospective or current  
22 student’s criminal or juvenile justice his-  
23 tory, the necessary and proper training on  
24 the effective use of criminal or juvenile jus-  
25 tice history data, including the problems

1 associated with this information, the types  
2 of supporting documents that may need to  
3 be obtained, and the appropriate privacy  
4 protections that must be put in place.

5 “(C) If an institution of higher education  
6 determines that it is necessary to inquire about  
7 the criminal or juvenile justice history of appli-  
8 cants for admission, it is recommended that the  
9 institution comply with the following:

10 “(i) Delay the request for, or consid-  
11 eration of, such information until after an  
12 admission decision has been made to avoid  
13 a chilling effect on applicants whose crimi-  
14 nal or juvenile justice involvement may ul-  
15 timately be determined irrelevant by the  
16 institution.

17 “(ii) Provide notice and justification  
18 for applicants within 30 days if, upon re-  
19 ceiving information regarding applicants’  
20 criminal or juvenile justice involvement,  
21 the admission to the institution is denied  
22 or rescinded based solely on the applicant’s  
23 criminal or juvenile justice involvement.

24 “(iii) Inquire about criminal or juve-  
25 nile justice history transparently and clear-

1 ly inform applicants as early as possible in  
2 the application process how to respond to  
3 the inquiry.

4 “(iv) Ensure the questions are specific  
5 and narrowly focused.

6 “(v) Give applicants the opportunity  
7 to explain criminal or juvenile justice in-  
8 volvement and preparedness for postsec-  
9 ondary study.

10 “(vi) Provide admissions personnel,  
11 registrars, and any other relevant staff of  
12 the institution, as well as any other staff  
13 that should have access to a prospective or  
14 current student’s criminal or juvenile jus-  
15 tice history, the necessary and proper  
16 training on the effective use of criminal or  
17 juvenile justice history data, including the  
18 biases or limitations associated with this  
19 information, the types of supporting docu-  
20 ments that may need to be obtained, and  
21 the appropriate privacy protections that  
22 must be put in place.

23 “(3) TRAINING AND TECHNICAL ASSISTANCE.—

24 “(A) IN GENERAL.—The Secretary, acting  
25 through the Office of Postsecondary Education

1 of the Department, shall use funds available to  
2 the Department to provide institutions of high-  
3 er education with training and technical assist-  
4 ance on developing policies and procedures  
5 aligned with the recommendations described in  
6 paragraph (2).

7 “(B) TRAINING.—The training described  
8 in subparagraph (A) shall include—

9 “(i) training for admissions and finan-  
10 cial aid personnel and enrollment manage-  
11 ment staff of an institution of higher edu-  
12 cation to understand and evaluate an ap-  
13 plicant if—

14 “(I) the institution makes a de-  
15 termination under paragraph (2)(A)  
16 to continue asking criminal or juvenile  
17 justice history questions in the admis-  
18 sions process; or

19 “(II) the institution makes a de-  
20 termination under paragraph (2)(A)  
21 to remove criminal or juvenile justice  
22 history questions in the admissions  
23 process, but continues to make crimi-  
24 nal or juvenile justice history inquiries  
25 in non-admissions settings;

1           “(ii) training to ensure that if an in-  
2           stitution does not ask criminal or juvenile  
3           justice history questions, that proxy ques-  
4           tions or factors are not used in lieu of  
5           criminal or juvenile justice history informa-  
6           tion;

7           “(iii) training for financial aid per-  
8           sonnel and any other staff of an institution  
9           of higher education involved with campus  
10          employment to provide guidance related to  
11          work study programs or on campus em-  
12          ployment available to formerly incarcerated  
13          or juvenile adjudicated individuals;

14          “(iv) training for registrars, academic  
15          counselors, student housing staff, student  
16          life staff, and any other staff of an institu-  
17          tion of higher education who would have  
18          access to a student’s criminal or juvenile  
19          justice information when the student is an  
20          enrolled student; and

21          “(v) training for career counselors to  
22          ensure that students with involvement in  
23          the criminal or juvenile justice system are  
24          provided with targeted career guidance,  
25          made aware of potential barriers to em-

1                   ployment or licensure, and provided assist-  
2                   ance to respond to these barriers.

3           “(b) RESOURCE CENTER.—The Secretary shall de-  
4 velop a resource center that will serve as the repository  
5 for—

6                   “(1) best practices as institutions of higher edu-  
7 cation develop and implement practices aligned with  
8 the recommendations described in subsection (a)(2)  
9 to ensure the successful educational outcomes of stu-  
10 dents with criminal or juvenile justice histories; and

11                   “(2) supplemental research on criminal and ju-  
12 venile justice-involved individuals and postsecondary  
13 education.”.

14 **SEC. 4. FINANCIAL AID.**

15           Section 483(a) of the Higher Education Act of 1965  
16 (20 U.S.C. 1090(a)) is amended by adding at the end the  
17 following:

18                   “(13) RESTRICTION ON QUESTION OF CONVIC-  
19 TION FOR POSSESSION OR SALE OF ILLEGAL  
20 DRUGS.—Notwithstanding any other provision of  
21 law, the Secretary shall not include on any form de-  
22 veloped under this section, a question about the con-  
23 viction of an applicant for the possession or sale of  
24 illegal drugs.”.

○