

NATIONAL
JUVENILE JUSTICE
NETWORK

April 23, 2019

National Bureau of Background Investigations
U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415
Attn: Donna McLeod

Submitted via Regulations.gov

Re: Comments to OPM's Declaration for Federal Employment Form (OF306)

Dear Ms. McLeod:

On behalf of the National Juvenile Justice Network (NJJN) we are writing in response to the Office of Personnel Management's (OPM) request for comments (84 Fed. Reg. 5733, dated February 22, 2019) to the form completed by applicants for federal and federal contract employment.

NJJN leads a national movement of state-based juvenile justice reform organizations and alumni of its Youth Justice Leadership Institute to shrink our youth justice systems and make what remains fair and effective. NJJN advocates for policies and practices that treat youth in trouble with the law with dignity and humanity. These policies and practices strengthen these youth, their families and their communities, while also making the public safer. NJJN is currently comprised of 53 organizational members in 43 states and the District of Columbia and a growing cadre of graduates from our Youth Justice Leadership Institute.

Thank you for the opportunity to submit comments on the proposed changes to Optional Form 306 (OF306). We are particularly concerned about the proposed change to OF306 which would require job applicants for federal jobs and federal contract employment to disclose their past completion of a diversion program. Pre-trial diversion participation is not a conviction, and therefore is not relevant information needed by a potential employer. Pre-trial diversion programs serve as an alternative to prosecution and divert individuals away from incarceration and into community-based programs. Individuals who successfully complete these programs, including many people who have been arrested for the first time, are then able to move forward with their lives and seek gainful employment without the stigma of an arrest or conviction record.

By requiring applicants to disclose pre-trial diversion participation, it exposes them to many of the harmful collateral consequences that the pre-trial diversion program was trying to prevent, including

diminishing chances to find jobs, access decent housing, obtain students loans, and go to college, join the military, or even vote. This disclosure will make it harder for these individuals to gain employment so that they can become productive members of society. Employment is also important as it contributes to public safety since having a job makes it less likely that an individual will commit another offense.

We appreciate that the form instructs that answers to Question 9 should omit any violations of the law that were committed before a person's sixteenth birthday, any violation of the law committed before a person's eighteenth birthday if decided in juvenile court or under a youth offender law, or any conviction set aside under the Federal Youth Corrections Act or similar state law. However, this would still exclude a number of young people, including those youth in states where youth under eighteen are automatically deemed to be adults in the eyes of law,¹ and those youth tried as adults² – laws which have a disproportionate impact on youth of color.³

OPM's proposed policy would also have a particularly harmful and disproportionate impact on people with histories of substance use and mental health disorders who have participated in such diversion programs. These proposed changes are completely at odds with the President Trump's recently released 2019 Office of National Drug Control Strategy, urging the federal government to increase employment opportunities for people in recovery.

By creating these new reporting requirements, OPM is not only undermining the employment prospects of people with records and others who are directly impacted by the reforms, but it is also discouraging well qualified workers from both seeking and accepting employment with the federal government and federal contractors in today's tight labor market. For this reason, we strongly oppose the proposed changes to the "Declaration for Federal Employment" (OF306).

Thank you for your consideration.

Sincerely,



Sarah Bryer

¹ John Kelly, *In Another Big Year for "Raise the Age" Laws, One State Now Considers All Teens as Juveniles*, THE CHRONICLE OF SOCIAL CHANGE (June 25, 2018), <https://chronicleofsocialchange.org/youth-services-insider/juvenile-justice-raise-the-age-vermont-missouri-state-legislation> (noting Georgia, Texas, Michigan, and Wisconsin set the age of criminal responsibility below 18).

² JEREE THOMAS, ESQ, AND MEL WILSON, THE COLOR OF YOUTH TRANSFERRED TO THE ADULT SYSTEM: POLICY & PRACTICE RECOMMENDATIONS 1 (2017), available at http://www.campaignforyouthjustice.org/images/pdf/Social_Justice_Brief_Youth_Transfers.Revised_copy_09-18-2018.pdf.

³ In 2014, Black youth were 14% of the youth population nationally, but 52.5% of the youth transferred to adult court by juvenile court judges, the highest percentage of Black youth transferred in nearly thirty years of data collection. *Child Population by Race in the United States*, KIDS COUNT DATA CENTER, THE ANNIE E. CASEY FOUND., <https://datacenter.kidscount.org/data/tables/103-child-population-by-race#detailed/1/any/false/870.573.869/68.69.67.12.70.66.71.72/424> (last visited Apr. 12, 2019); M. Sickmund, A. Sladky, and W. Kang, *Easy Access to Juvenile Court Statistics: 1985-2014*, <https://www.ojjdp.gov/ojstatbb/ezajcs/> (last visited Apr. 12, 2019).

