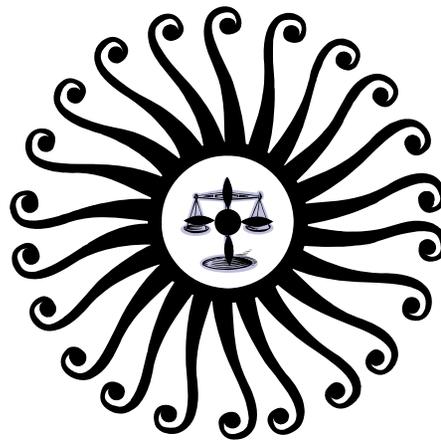




**COLLATERAL CIVIL CONSEQUENCES
OF CRIMINAL CONVICTIONS**
Improving Outcomes for Defendants

Criminal Advocacy Training Program
September 15, 2006

Why Should Defenders Care About Collateral Civil Consequences?



The Civil Impact May Be Most Significant



- Civil consequences may be even worse than criminal consequences.
- Defendants need to know the consequences to make informed choices.

Improved Criminal Dispositions

- Argue civil impact is disproportionate to criminal conduct
- Deportation, loss of housing, job, educational opportunities



Risk Management

Reduce damaging statements by clients or witnesses in ancillary civil actions with fewer protections



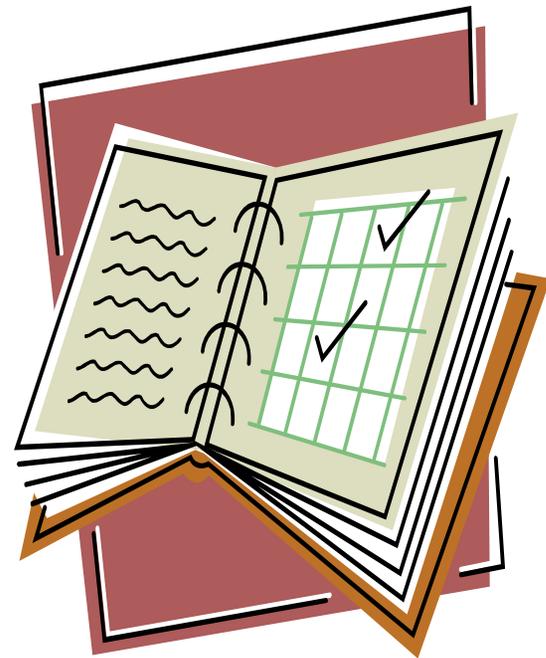
Discovery Opportunities

- Use civil proceedings as discovery tools.
- Use subpoena powers in civil cases.



Critical Times to Assess and Mitigate Consequences

- Plea Negotiations
- Sentencing
- Before Incarceration



Building Your Case

- Prosecutors may care about the “big picture” more than consequences to defendant.
- Document impact of consequences (e.g. deportation, eviction, loss of employment) on innocent third parties (defendant’s family, children, community).
- Document defendant’s positive contributions to society (school, work, volunteer efforts, etc)

THE RECORD: Expungement and Sealing



Expungement – who is eligible?

- 1 conviction only
- 5 years from conviction or release, whichever is longer
- Juveniles must be at least 24
- Discretionary with the court

Some offenses can't be expunged

- Offenses punishable by life imprisonment (regardless of actual sentence)
- CSC 1, CSC 2, CSC 3, assault with intent to commit CSC
- Traffic offenses reportable to the Secretary of State
- Non-traffic offenses reportable to SOS may be expunged but SOS still keeps a record.

Disposition without entry of judgment of conviction (“sealing record”)

- Consider at plea /sentence
- Variety of statutory options
- Usually results in dismissal of case after successful probation
- Often for 1st offenses (e.g. first time drug possession or use)

NOTE: Certain pleas (even without conviction) can have immigration consequences.

Example #1:

Cliff was arrested after a bar fight. The cops found a gun when he was searched.

He has been charged with carrying a concealed weapon and with assault. He does not have a prior criminal record.

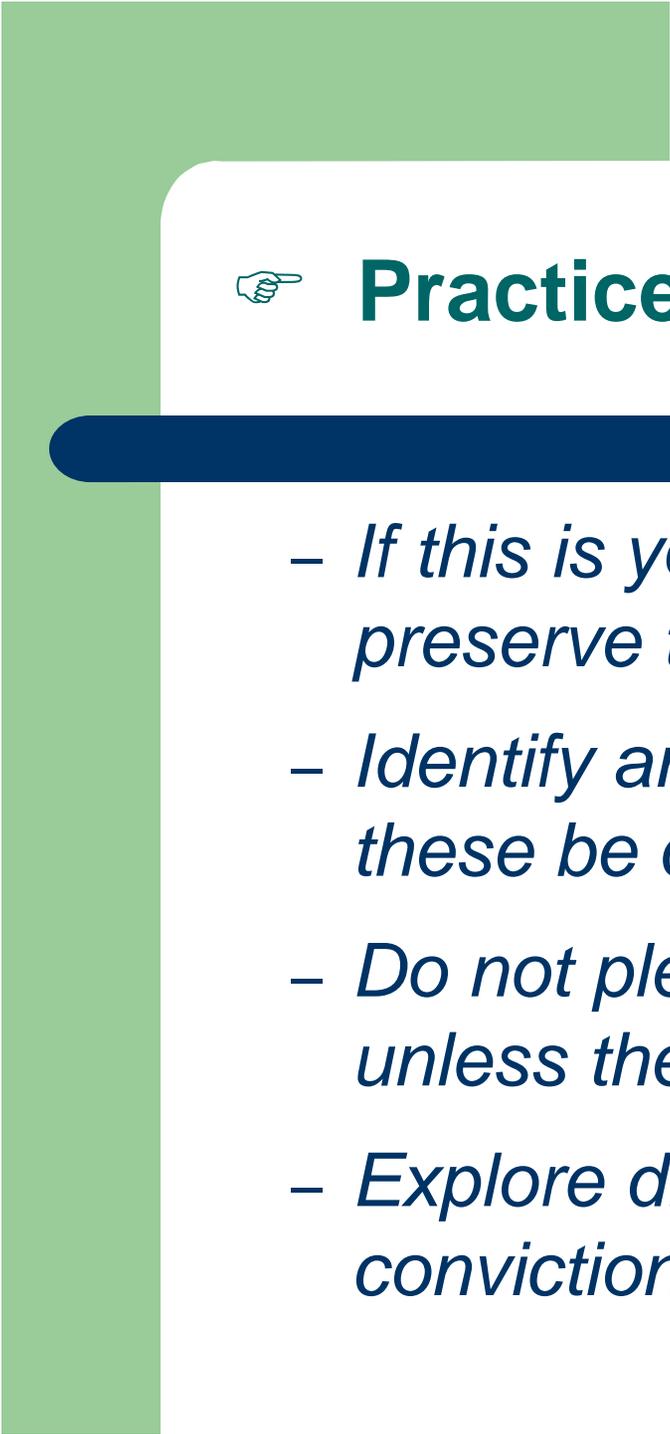
What do you do?

Example #2

- Jerry, who has no record, has been charged with 3 counts of embezzlement after taking checks from his employer.
- The prosecutor offers either a plea to three counts of misdemeanor larceny, or one count of felony embezzlement. Either would carry a sentence of 2 years probation.
- What advice do you give your client?

Example #3

Frank has been charged with two counts of possession of a controlled substance. He has a juvenile record for minor shop-lifting and destruction of property, but this is his first adult case. He is 19. What do you do?



Practice Tips – Expungement

- If this is your client's first offense, try to preserve the possibility of expungement.*
- Identify any other pending charges. Can these be dismissed as part of a deal?*
- Do not plead to multiple charges or counts unless there are good reasons to do so.*
- Explore disposition without judgment of conviction*

Housing

Stable housing is critical to successful re-entry and to family reunification



Consequences: Loss of housing options

- Any convictions will make it harder to find housing – landlords can refuse to rent
- Certain convictions will result in loss of subsidized housing
- Entire family can be evicted, not just offender

Convictions that Impact Subsidized Housing

- Mandatory eviction and denial of admission
 - Life-time Sex Offender Registration Offenses
 - Methamphetamine Production
- Possible eviction
 - Drug crimes
 - Alcohol abuse
 - Crimes that threaten well-being of other residents (most other crimes)

Public Housing v Section 8

- Rules are often similar but don't assume identical.
- Different public housing authorities can have different rules in discretionary areas.
- When in doubt on impact, get information on applicable rules from legal services office and/or review the PHA's policies.

Impact on Household Members

- Housing Authority can terminate housing to others based on defendant's conviction (or criminal activity) if defendant was living with or visiting other residents at time of offense.
- "Criminal activity" doesn't necessarily require a conviction to result in eviction.

If Substance Abuse, Pursue Rehab

- For some drug or alcohol related activities, housing authority may accept defendant, if defendant completes rehabilitation program approved by the HA.
- Find out what program(s) are approved by Housing Authority.

Discovery Opportunities and Risks

Administrative hearings

Eviction cases

Proceed independently from criminal case

Sex Offender Registry

- School Safety Zone: Can't live within 1000 feet of school property

Standard Parole Conditions

- Restrictions on living with children
- Restrictions on living near children
- Restrictions on living with /near victims
- Other?

Example #4

Tara lives with her 80-year-old grandmother in subsidized rental housing. She's been arrested for smoking marijuana. This is her first offense. What argument do you make for why the case should be dismissed outright?

Example #5

Ken has been charged with kidnapping a 16 year old girl. (MCL 750.349.) Ken and his family have a Section 8 voucher and live in a rented apartment. The D.A. has offered either a plea to the kidnapping charge, with 3 years probation (first year in county jail), or a plea to Assault with Intent to Commit Great Bodily Harm with no sentence bargain. This crime doesn't require long term registration on the sex offender registry. How do you advise your client?

Example #6

Pete, who is 18, had sex with his 15-year-old girlfriend, and is now being charged with third degree criminal sexual conduct for sexual penetration of a person under the age of 16. Pete recently bought a house, which is next to a school. He lives there by himself. This is Pete's first offense. What do you do?

Housing Practice Tips

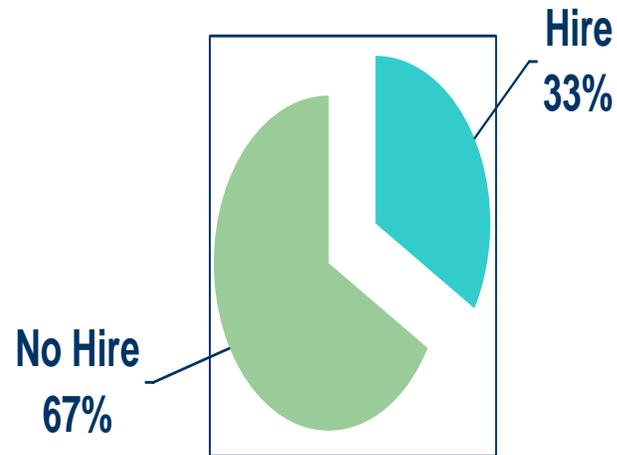
- *If the criminal case arose from a search warrant for drugs in subsidized housing, prepare your clients for an eviction*
- *Use impact of a conviction on innocent family members in negotiations*
- *Where possible, seek to avoid convictions that require listing on sex offender registry*
- *Tell your clients to attend a relevant treatment programs in order to prove rehabilitation*

Employment



Why consider barriers to employment?

- 2/3 employers won't hire people with criminal records
- 80% large / 66% small employers do background checks
- Reduced wages increase recidivism



Statutory Barriers to Employment

- State and Federal Laws and policies prevent employment of people with convictions in many jobs.
- May need to report arrests or convictions to current employer.

Resources to Find Applicable Rules

- Training Materials: Updates on web
- Website of agency that regulates industry
- Unions
- Defendants' own employment materials
- Other Lawyers

Jobs Likely to be Affected and to Require Reporting

- Working with or near children
- Working with or near vulnerable adults
- Licensed Professions
- Security-related fields
- Transportation-related fields
- Jobs hired or paid by Government

Example #7

Dan has worked for two years as a security guard, and supports his family of four. He has been charged with felony breaking and entering. What arguments could you make for why he should only be convicted of a misdemeanor?

Example #8

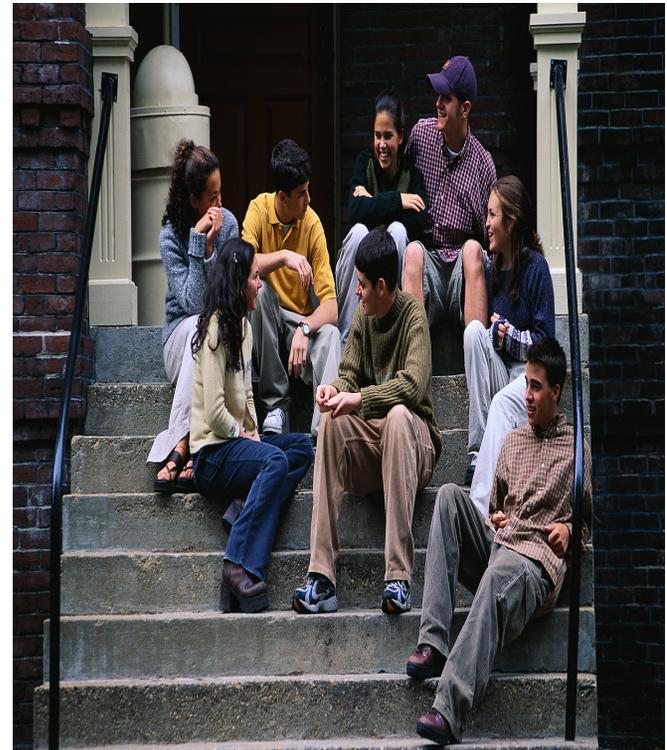
Sharon has been charged with misdemeanor negligent homicide as a result of a driving accident. She has worked her entire life as nurse aid in nursing homes. What do you do?

Employment Practice Tips

- ☞ *Always check on defendant's current and intended areas of employment.*
- ☞ *Always check reporting requirements if your client is in one of likely areas for reporting requirements.*

Student Loans & Financial Aid

- Violation of federal or state law involving possession OR use of controlled substance
- Results in denial of federal financial aid for specified time
- May be able to reduce time if complete approved rehabilitation program.



Example #9

- Claire is in college, and is paying for her education with federal student loans. She is charged with possession of a controlled substance. What do you say in arguing that the charges should be dismissed?
- What if the prosecutor insists on a conviction for possession?

Student Financial Aid Practice Tips

- ☞ *Tell your clients to attend a relevant treatment programs in order to prove rehabilitation for purposes of financial aid.*



Rehabilitation

Public Benefits



Incarceration and Benefits

Federal benefits (Social Security/ SSI) will stop while an individual is incarcerated (although benefits to a retired or disabled person's dependents should continue).

Drug Related Felonies and Benefits

- Federal law permanently bars anyone with a drug-related felony conviction from receiving certain benefits during his or her lifetime.
 - Covers TANF benefits (traditional cash benefits for parents & children)
 - Food stamps
- Michigan has “opted out” of this bar, but other states still have it.

Fleeing Felons and Parole Violators

- Public assistance applicants subject to national warrant check.
- If have an outstanding felony warrant OR are violating a condition of probation OR parole then Disqualified From:
 - TANF (Cash for families)
 - SSI (cash based on age/disability)
 - Food Stamps
 - Subsidized housing

Example #10

Kathy and her four children live in Indiana, where she survives on TANF (welfare) benefits and food stamps. To make ends meet, Kathy agreed to carry drugs to Michigan, where she was caught and charged with distribution of a controlled substance. What advice do you give to Kathy about whether to accept a deal that involves a felony conviction?

Example # 11

Tim is mentally ill, and lives on SSI benefits. He's out on bond after being arrested for Assault with a Dangerous Weapon. He tells you he is thinking about skipping town before the trial, and going to live in California. What advice do you give Tim?

Public Benefits Practice Tips

- ☞ Always advise clients with drug-related felony cases of the ban on public benefits, in case they move to another state.
- ☞ Warn clients they are subject to a warrant check when applying for public assistance.
- ☞ Try to resolve any open felony warrants as part of the case.

Protecting Parental Rights



- Does Defendant have children?
- Have custody?
- Pay support?
- Failure to provide for children's care & custody can result in termination of parental rights

Federal Law

Parental Rights **MUST** be terminated if:

- Serious crime against child
- In foster care 15 out of last 22 months unless compelling reason not to terminate
- Being in prison may not be compelling reason

State Law

Parental Rights MAY be terminated if:

- Parent in prison 2+ years and did not provide for child's care and custody
- Parent did not provide for child's care and custody, and there is no reasonable expectation that parent will provide proper care/custody within reasonable time (which may be shorter than 2 years)
- Parent convicted of certain serious offenses

Actions to Take

- Parental Power of Attorney
“Temporary Authorization of Kinship Care”
Forms available on-line
Good for 6 months at a time – no court required
- Guardianship
Requires court order
Guardian must file reports with court

Child Support – why address before incarceration?

- \$28,000 average arrearage for prisoners
- No retroactive adjustments after released
- Up to 65% of wages taken to pay support after released.
- Can increase risk of losing parental rights
- Prevent later bench warrants and incarceration

Actions to Take



- Request reduction or cancellation of child support payments ASAP
- Self-help kits available

Example #12

- George has been sentenced to a 10 year term. He pays child support for two children, ages 3 and 5, by different mothers. What advice do you give him?

Example #13

Rhonda has been sentenced to a five year prison term. She is planning to have her daughter live with Rhonda's mother. The child's father – to whom Rhonda is not married – is unstable. Child Protective Services previously investigated Rhonda and the father because the father abused the child.

What advice do you give Rhonda?

Example # 14

- The facts are the same as above, except that Rhonda is facing a five month jail sentence. Does your answer change?

Family Law Practice Tips

- ➔ Advise clients to make legally valid arrangements for their children while incarcerated
- ➔ Advise incarcerated clients to file for modifications of child support ASAP

What can you do?

- Learn about consequences
- Screen clients for potential civil consequences
- Refer clients to – and/or consult with - knowledgeable civil counsel
- Recommend participation in treatment programs approved by 20public housing authority

Using your knowledge to improve outcomes and overcome barriers

- Use discovery in civil cases
- Anticipate and avoid incriminating statements
- Expose unjust or extreme civil consequences to negotiate better outcomes in criminal matters
- Educate defendants on steps they can take before incarceration to reduce post-release barriers



Tools for Your Practice

- Checklist
- Training Resources
- On Line Resources
 - www.mplp.org
 - www.sado.org
 - www.reentry.net
 - www.hirenetwork.org
- Resource People



Technical assistance from Legal Aid and Defender

- Questions from ATTORNEYS

Fax Question to Attn: Joyce Holman

Fax # 313-887-5543

Put “Criminal Defense Question” in subject

Provide relevant case info & any time deadlines

Special email address will follow in future.

Legal Advice and Help for your CLIENTS

- Refer clients to Legal Aid and Defender's general intake #

(313) 964-4700

(877) 964-4700

Family Law issues – M 2-4

Other issues T- Th 9 – 4

Summary

- Civil consequences can be as severe, or even more severe, than criminal consequences.
- The best record is no record.
- The second-best record is one that does the least damage, given your client's individual situation.



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