

Collateral Consequences OF CRIMINAL CONVICTIONS

WHAT CONSEQUENCES RESULT FROM A CRIMINAL CONVICTION?

- The direct consequences of a criminal conviction are imposed by the criminal court and may include jail or prison sentences, probation or parole eligibility, and the imposition of fines and other requirements. In contrast, indirect or “collateral consequences” of a criminal conviction are civil penalties imposed by the government or government agencies, licensing boards, or other civil entities. Examples of collateral consequences include felon disenfranchisement, the loss of professional licenses, deportation, and the denial of public benefits.

WHY SHOULD I CARE?

- “Criminals need to take personal responsibility and deal with the natural consequences of their actions.”
- “I have too many cases to worry about. I don’t have time to deal with reading discovery, negotiating pleas with the State, and covering all of the courts I have. I just do the best I can to get it all done.”
- “I cannot care more than my clients care about their own lives.”
- “There are more important things to worry about.”

CLIENT-CENTERED REPRESENTATION

- Representing the human being and not just the case. Engaged lawyers help clients determine their objectives in light of the law and in light of the clients' own understandings of themselves, their relationships with others and the world and the clients' evolving desires about what they want. Clients' objectives are tied to their feelings, relationships and experiences; their objectives often change over the course of representation; and their objectives are shaped in part by the information about the law and available legal options that their lawyers explain to them. Working compassionately with indigent clients means seeing firsthand that the problems and challenges they face stretch farther than the confines of the criminal cases before them. The better we know someone, the better we are able to advocate for him/her.

ETHICAL OBLIGATIONS

- Voluntary and Knowing-fully informed
- Capacity to Proceed
- Rules of Professional Responsibility
- Case Law-Ineffective Assistance of Counsel; Strickland; Boykin; Padilla v Kentucky; State v. Goforth, 130 N.C. App. 603 (1998)
- Indigent Defense Performance Guidelines
 - Scope of Representation

COMMUNITY AND SOCIETAL IMPACT

- Certainly, the community's interests are advanced when former offenders are reintegrated as working, tax-paying members of society, with adequate resources to provide for themselves and their families. The costs of incarceration are almost always understated. Beyond the capital expenditures of building and staffing prisons, incarceration wreaks havoc on families and communities left impoverished by the loss of a provider or parent. Adequate opportunity for employment also serves the interest of public safety. Studies show a statistical relationship between lack of employment and increased risk of recidivism.
- Through better understanding of clients and their circumstances, lawyers can provide judges and prosecutors with the tools and the assurances they need to feel comfortable rendering a more pro-defense or pro-client decision.

Effect of Zero Tolerance Policies

- Too often we criminalize behavior that decades ago would not have been. We add on specific category or penalty enhancements for everything from where a crime was committed to the status of the victim or intended victim. Intent is equated with commission. Too many of our criminal laws are written to respond to behavior that should be dealt with (and would more effectively be dealt with) outside the criminal justice system. And evidence on the impact of public safety is mixed or limited at best.

CRIMINALIZATION

- The number of individuals under correctional supervision rose from 2,869,836 in 1985 to nearly 7 million people in 2012, 2.2 million of whom were incarcerated in jail or prison.
- During this same time, policymakers also sought to widen the system's punitive reach beyond the boundaries of formal criminal sanctions. Coinciding with the growing severity of criminal penalties was the expansion, both in number and scope, of a vast network of post-punishment penalties and restrictions (or "collateral consequences") aimed at excluding individuals with criminal histories from many aspects of mainstream life

PUBLIC SAFETY

- While many of these consequences were rationalized as steps to protect the public, they also aimed to attach further opprobrium by enacting a system that would continue to stigmatize and marginalize individuals—with a criminal record well beyond their sentences. These include temporary or permanent loss of certain civil rights (such as the right to vote, serve on a jury, or hold public office); temporary or permanent ineligibility for social benefits, such as public housing, food stamps, or rights to pensions, disability, veteran's benefits or federally-funded student aid; employment or occupational licensing restrictions; restrictions on certain aspects of family life (such as the ability to adopt or retain custody of one's own children); and for non-citizens, deportation. All of this does not account for the many difficult-to-regulate *informal* disqualifications imposed by private actors (i.e., landlords, employers, university admission officers) which stem not from the express operation of the law, but from the social stigma suffered by individuals with a criminal record.

INHERENT BIAS AND DISCRIMINATION

- Too often we respond to already vulnerable members of our communities who are primarily sick, poor, homeless, or unable to care for themselves or their families with the hammer of the criminal justice system. And then we continue to hammer them long after they have satisfied our need for retribution. A growing body of scholarship, discussed in the School of Government manual *Implicit Bias in the Criminal Justice System* (Section 10, in particular), suggests that unconscious associations affect the perceptions and decisions of court actors, and may contribute to disparate treatment and outcomes in the criminal justice system. The general population of North Carolina is 68.5% white, 21.5% black, and 8.4% Latino, whereas the State's prison population for drug offenses is 28.5% white, 53.2% black, and 17.6% Latino. Moreover in 2009, approximately 57% of the people who received felony convictions were African American. Thus, communities of color are obviously disproportionately represented in the criminal justice system, which makes it more likely these communities will face the harsh, debilitating, and sometimes lifelong collateral consequences triggered by a criminal conviction.

SOCIETAL IMPACT on ALL of US

- REENTRY:** Ability to reintegrate derailed by obstacles in obtaining the most fundamental necessities of life—like a job, a place to live, and education—and affect not just the individuals with convictions but also their families.
- RECIDIVISM:** Lack of assistance to deal with the problems that got them involved in the criminal justice system in the first place—such as mental illness, substance abuse, or lack of vocational skills or education. These issues, when left unaddressed, increase the risk of recidivism, and many of these people are returning to communities lacking the resources or services necessary to cope with these pressing needs. Indeed, these communities are often poor, urban, minority neighborhoods marked by endemic poverty and unemployment, family dislocation, high residential turnover, and a breakdown of community social processes and controls.

Future Enhancements

- Record Levels
- Habitual Status
- Aggravating Factors
- Probation Violations/Revocation of Probation or Parole
- Federal enhancements
- Exclusion from expungement remedies

Direct and Indirect Financial Burdens

- SURPRISE COSTS, FINES, and FEES, forfeiture of assets
- COURT DISCRETION
- FOUND INDIGENT-Mitigating circumstances
- FINANCIAL CONSEQUENCES
- TIME TO PAY
- ULTIMATELY RESULTING IN SHOW CAUSE/CONTEMPT
- JAIL TIME???

EMPLOYMENT AND PROFESSIONAL LICENSES

- Military and Government Service Eligibility
- Professional Licenses and Administrative Boards

ARREST RECORDS

- Convictions are made part of public records that may be researched easily via the internet.
- Most people think that the arrest record is either thrown out or sealed, especially if dismissed or found not guilty. Many are unaware that anyone can have access to arrest information for years to come. Some of whom could use this information to make determinations of capability for employment and housing. These records may include identifying information and allegation details, photographs, fingerprints, DNA samples, as well as warrants and bond paperwork.
- The person who is the subject of an arrest must be proactive in seeking to have the record expunged or sealed in order to protect themselves.

CITIZENSHIP: VOTING RIGHTS/FIREARM RIGHTS/DOMESTIC RIGHTS

- In NC, a convicted felon temporarily loses their citizenship rights to vote, hold public office, or serve as a juror until they complete their sentence. Citizenship may be restored after serving any active sentence, probation, and parole time.
- Restrictions on possessing firearms and getting gun permits
- Restrictions on adoption, guardianship, fostering and parental rights

IMPACT ON CHILDREN AND FAMILIES

- Involvement in the criminal justice system often has a destabilizing effect on families. Over half of state inmates and nearly two-thirds of federal inmates are parents of children under age 18.
- Most of these parents—even those who did not live with their children—contributed income, child care, and social support before imprisonment. However, during incarceration, fathers in particular lose contact with their children. Only 40 percent have weekly contact of any kind with their child, but contact declines as the sentence continues; over half of fathers in prison never have an in-person visit with their child.

Children of Incarcerated Parents

- Children with at least one incarcerated parent suffer higher rates of low self-esteem, depression, emotional withdrawal, and disruptive behavior, and have an increased likelihood of future delinquency and criminal offending
- It is in the interests of public safety, therefore, that public policy focus on helping incarcerated parents maintain and strengthen family bonds, and assisting these parents in providing support for their children after release—for example, by increasing employment opportunities or opting out of bans on public assistance for certain ex-offenders

IMMIGRATION CONSEQUENCES

- Defense counsel has an obligation to investigate and advise clients of potential immigration consequences.
- A noncitizen should avoid an aggravated felony (AF) conviction if at all possible.
- Crimes of Moral Turpitude offenses are both a ground of deportability and inadmissibility, but there are technical rules governing each ground. Thus, an offense may be a CMT but still not be a removable offense if the offense is a misdemeanor and the client has no prior CMT convictions.
- Under federal immigration law, a “sentence” includes any period of incarceration ordered by the court, whether active or suspended.

HOUSING

- While it is understandable that landlords and other housing providers want to keep their premises safe, properly used, and paid for, a lack of relevant guidelines creates the risk of housing denials based solely on the blanket use of criminal records. Housing regulations that clarify when use of an individual's criminal history is permissible and reversing policies that make individuals with criminal records presumptively ineligible for public housing (in addition to other social benefits) ensures that individuals are able to access an important safety net when they need it most.

And other PUBLIC BENEFITS

- Insurance
- Subsidized Childcare
- Nutritional Assistance Programs
- Unemployment Benefits
- Worker's Compensation
- TANF/WorkFirst Programs

EDUCATION

- Admissions policies
- Financial Aid

SEX OFFENDER REGISTRATION AND RESTRICTIONS

- Residence restrictions
 - Distance restrictions, Federal housing restrictions
 - Homelessness
- Premises restrictions
- Education restrictions
- Internet Restrictions
- Contact Restrictions
- No expunctions/No name changes allowed

DRIVING PRIVILEGES

- When a person is convicted of impaired driving or driving with a suspended or revoked license, DMV must revoke the person's license and the length is increased based on the number of subsequent offenses. If the person was under 21 at the time of the offense, DMV also must revoke the person's license pursuant to [G.S. 20-13.2\(b\)](#). If the person was convicted of driving after consuming while under age 21 in violation of [G.S. 20-138.3](#), the person's license is revoked pursuant to [G.S. 20-13.2\(a\)](#). Revocations under G.S. 20-13.2 endure for one year and run concurrently with any other revocations. A failure to appear or pay a fine results in indefinite suspension of privileges under 20-24.1. Driving privileges may also be revoked with the accumulation of 12 points in 3 years or reckless driving 20-16.1. <https://www.ncdot.gov/dmv/licensure/suspensions/>
- Determine if client is eligible for limited driving privilege. Assist client in cleaning up driving record.

REMEDIES

- Persuasively Arguing Mitigating Circumstances in Negotiation and to the Court
- Deferred Prosecution programs*
- Writs and Motions for Appropriate Relief
- Expungement and other post-conviction relief
- Certificates of Relief
- Legislative Advocacy: Reclassification of Offenses*
- Policy Advocacy: “Ban the box” initiatives
- Community Advocacy: Incentivizing Employers

Links to Collateral Consequences Inventories

- http://www.abacollateralconsequences.org/user_guide/
- <http://ccat.sog.unc.edu/>