Collateral Consequences of Conviction:

A Reminder of Some Possible Civil Penalties

Judge Harold Baer, Jr.

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THIS IS NOT A COMPLETE LIST—
CONSIDER ALL POTENTIAL PENALTIES.

You are required to advise your clients of immigration collateral consequences under *Padilla v. Kentucky*, and while this obligation does not extend to other collateral consequences—including the ones outlined below—it may be helpful in counseling your client. Let me stress that this is only an outline. The statutes and case law provide the detail.

The purpose of this guide is to serve as a reminder and alert you to various civil penalties that your client may face as a result of a criminal conviction in federal court and how those penalties may be overcome whenever possible. Keep in mind that ***many federal convictions may lead to civil consequences under state law***.

HOW TO USE THIS GUIDE

Talk to your client about the collateral consequences of a conviction in general, and especially about the specific collateral consequences that may accompany a conviction in his or her case. This guide lists some of the most common collateral consequences, but it does not include them all.

NOTE: Where restrictions are state-based, New York law on restrictions and relief is noted. You will, of course, have to determine restrictions and relief opportunities for other states should your client plan to return or settle outside New York State.

In New York, your client can apply for a Certificate of Relief from Disabilities (CRD) or a Certificate of Good Conduct (CGC) to restore many rights lost due to a criminal conviction. Your client can apply for a CRD if he or she was convicted of no more than one felony and can apply for a CGC if he or she was convicted of any number of crimes.

Only the State Board of Parole can issue CRDs and CGCs to eligible federal offenders. Under recent legislation, the Board will accept recommendations for CRDs for those convicted in New York federal courts from the Chief Probation Officer of the court where the conviction occurred; this is a far faster process than making an application to the State Board of Parole.

While lawyers who practice criminal law know about most, if not all, of these collateral consequences, this guide will at the very least help you zero in on the ones most relevant to your client's situation.

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Jury Service

Federal Jury Service:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY FELONY CONVICTION OR INDICTMENT *28 U.S.C. § 1865(b)(5)*	Disqualified from serving on a federal grand jury or petit jury	**UNAVAILABLE** unless your client has his or her rights restored, usually by a state or federal pardon
NOTE: New York does not automatically restore jury service rights to those convicted of felonies.		

New York Jury Service:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY FELONY CONVICTION *N.Y. Jud. Law § 510(3)*	Disqualified from serving on N.Y. State jury	**UNAVAILABLE** unless your client has rights restored by CRD, CGC or pardon

Voting Rights

New York:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY FELONY CONVICTION *N.Y. Elec. Law § 5-106(2)*	Disqualified from voting under N.Y. law while in prison *and* while on parole	**AVAILABLE** right to vote automatically restored *after* parole **NOTE:** Your client should be provided with a registration form and informed of his or her right to vote upon completion of parole
NOTE: Qualifications for voting in federal elections are determined by state law in accordance with the U.S. Constitution. New York automatically restores the right to vote after parole.		

Federal Aid

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
CONVICTION FOR POSSESSION OF CONTROLLED SUBSTANCE *20 U.S.C. § 1091(r)*	Ineligible for federal assistance if conviction was during period when receiving aid	**AVAILABLE** for possession conviction -1st conviction: barred for 1 year -2nd conviction: barred for 2 years -3rd conviction: permanently barred from receiving financial aid
CONVICTION FOR SALE OF CONTROLLED SUBSTANCE *20 U.S.C. § 1091(r)*	Ineligible for federal assistance if conviction was during period when receiving aid	**AVAILABLE** for distribution conviction -1st conviction: barred for 2 years -2nd conviction: permanently barred from receiving financial aid

State-Based Aid

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
CONVICTION FOR POSSESSION OR SALE OF CONTROLLED SUBSTANCE	Depends on the state	**VARIES** by state
NOTE: New York does not use the FAFSA, which asks about controlled substance convictions, in determining aid eligibility. Instead, New York uses taxable income to determine eligibility.		

Federal Licensing Restrictions

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
DEPENDS ON LICENSE SOUGHT	May be automatic or discretionary	**AVAILABLE** depending on conviction -if under 21 years old when convicted of simple possession of a controlled substance, crime may be expunged from record -presidential petition -intra-agency appeal after license denial -judicial review of agency licensing decision

N.Y. Licensing Restrictions

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
DEPENDS ON LICENSE SOUGHT **NOTE:** All licenses in New York may effectively be denied on character grounds (i.e. when there is a direct relationship between the conviction and the license sought) EX: denial of an accounting license (CPA) where your client has a previous gambling conviction	May be automatic or discretionary	**AVAILABLE** -with CGC or CRD -entitled to hearings before N.Y. Department of State prior to a license denial
NOTE: Employers must consider CRDs and CGCs when your client applies for jobs.		

Specific Employment Restrictions

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
FELONY CONVICTION for inciting or organizing a riot or civil disorder *5 U.S.C. §7313*	Removal from federal office and ineligibility for employment by U.S. government for 5 years	**UNAVAILABLE** -but ineligibility terminates after 5 years
FELONY CONVICTION *10 U.S.C. § 504(a)*	-Ineligible to enlist in any service of the armed forces	**UNAVAILABLE** -unless an exception is made by the Secretary concerned

NOTE: There are many other employment restrictions arising from federal convictions that you should research if they are relevant to your client.

NOTE: As a condition of probation or supervised release, a judge may impose professional restrictions upon occupations that are reasonably related to the conviction.

Right to Marry

New York:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
LIFE SENTENCE *N.Y. Civ. Rights § 79-a(1)*	People are considered "civilly dead" and ineligible to marry while serving life sentence	**UNAVAILABLE** -eligibility to marry returns once your client is on parole
SENTENCE > THAN 3 YEARS *N.Y. Dom. Rel. § 170(3)*	"Fault" ground for divorce in New York	**N/A**

Retaining Custody of Children

New York:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY INCARCERATION OF A PARENT THAT CAUSES A CHILD TO BE IN FOSTER CARE FOR > 15 OUT OF LAST 22 MONTHS *N.Y. Soc. Serv. § 384-b(3)(l)*	Foster care agency may seek termination of parental rights	**AVAILABLE** -in New York, foster care agencies may extend time limits for parental termination where incarceration or participation in residential substance abuse treatment program is a significant factor in why a child has been in foster care, if your client maintains a meaningful role in child's life

Right to Adopt

New York:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
FELONY CONVICTION INVOLVING: A. i. child abuse or neglect; ii. spousal abuse; iii. crime against a child, including child pornography; iv. crime involving violence, including rape, sexual assault, or homicide (except for crimes involving physical assault or battery) OR B. felony conviction within past 5 years for physical assault, battery or drug related offense *N.Y. Soc. Serv. Law § 378-a(2)(e)*	Disqualified from adopting or becoming a foster parent	**UNAVAILABLE** -But a recent N.Y. State decision from the Bronx Family Court (*In Re the Adoption of Abel*, No. A8856/11) found that this law was unconstitutional as-applied so be sure to read the decision and advise your client accordingly
ANY CRIME *N.Y. Soc. Serv. Law § 378-a(2)(e)*	May be disqualified from adopting or becoming a foster parent and those your client lives with may be disqualified	**AVAILABLE** -bar is not automatic, but at the discretion of the foster care agency

Federal Restrictions

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY FELONY CONVICTION OR INDICTMENT WITHOUT TRIAL OR CONVICTION *18 U.S.C. § 922(d)*	Prohibited from selling or disposing of firearms or ammunition while under indictment or post-conviction	**UNAVAILABLE**
FELONY CONVICTION 18 U.S.C. § 922(g)	Prohibited from possessing a firearm	**AVAILABLE** -but must be accomplished under federal rather than state law
MISDEMEANOR DOMESTIC VIOLENCE CRIMES *18 U.S.C. § 922(g)*	Prohibited from possessing a firearm	**AVAILABLE** -but must be accomplished under federal rather than state law

N.Y. Restrictions

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
FELONY CONVICTION *N.Y. Penal Law § 265.01(4)*	Prohibited from possessing a firearm	**AVAILABLE** -if your client is convicted of a lower-level, nonviolent state felony your client can obtain a CGC
FELONY CONVICTION AND OTHER SERIOUS CRIMES (including possession of stolen property, stalking, permitting or promoting prostitution, endangering the welfare of a child) *N.Y. Penal Law § 400.00(1)(c)*	Prohibited from receiving a firearm license	**UNAVAILABLE**

Passport And Driver License Restrictions

Passport

Crime of Conviction	Restriction	Available Relief
ANY FEDERAL OR STATE DRUG OFFENSE if crossed international boundary in committing crime *22 U.S.C. § 2714(a)*	Passport may not be issued and existing passport may be revoked	**AVAILABLE** -expires once no longer on parole or supervised release

Driver License

Crime of Conviction	Restriction	Available Relief
DRUG OFFENSE *N.Y. Veh. & Traf. Law § 510(2)(b)*	License suspended for 6 months or more	**AVAILABLE** -may be eligible for a restricted license during suspension period
OFFENSES INVOLVING AUTOMOBILE (including any felony) *N.Y. Veh. & Traf. Law § 510(2)(a)*	May trigger automatic license revocation	**AVAILABLE** -may be eligible for restricted license during revocation period
NOTE: These are N.Y. state restrictions, not federal restrictions.		

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
AGGRAVATED FELONY CONVICTION *8 U.S.C. § 1227(a)(2)(A)(iii);* *8 U.S.C. § 1182(a)(2);* *8 U.S.C. § 1427(d)*	Ground for deportation; permanently denied reentry; ineligible to be citizen; ineligible for asylum	**UNAVAILABLE** -but may obtain relief through pardon
CONTROLLED SUBSTANCE CONVICTION *8 U.S.C. § 1227(a)(2)(B)(i);* *8 U.S.C. § 1182(a)(2)(C);* *8 U.S.C. § 1427(d)*	Ground for deportation; permanently denied reentry; ineligible to be citizen	**UNAVAILABLE** -except possible waiver as a ground of inadmissibility or deportation where first offense of possession of 30g or less of marijuana
CRIMES INVOLVING MORAL TURPITUDE (CIMT) *8 U.S.C. § 1227(a)(2)(A)(i);* *8 U.S.C. § 1182(a)(2)(A)(i)(I);* *8 U.S.C. § 1427(d)* EX: some forms of fraud, larceny, and crimes involving the intent to harm persons or things; *can even include misdemeanors*, such as theft of services, and others	Ground for deportation if 1 is w/in 5 years of admission to United States and sentence of 1 year+ imposed OR 2 different crimes any time; permanently denied reentry; ineligible to be citizen (unless single CIMT not punishable for >1 year)	**UNAVAILABLE** -but may obtain relief through pardon
FIREARM/ DESTRUCTIVE DEVICE CONVICTION *8 U.S.C. § 1227(a)(2)(C)*	Ground for deportation	**UNAVAILABLE** -but may obtain relief through pardon

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
DOMESTIC VIOLENCE CONVICTION OR RELATED OFFENSES *8 U.S.C. § 1227(a)(2)(E)*	Ground for deportation	**UNAVAILABLE** -but may obtain relief through pardon
PROSTITUTION AND COMMERCIALIZED VICE *8 U.S.C. § 1182 (a)(2)(D)*	Permanently denied reentry	**UNAVAILABLE** -but may obtain relief through pardon
CONVICTION OF >2 OFFENSES OF ANY TYPE + AGGREGATE PRISON SENTENCE OF 5 YEARS *8 U.S.C. § 1182(a)(2)(B);* *8 U.S.C. § 1427(d)*	Permanently denied reentry; ineligible to be citizen	**UNAVAILABLE** -but may obtain relief through pardon
2 GAMBLING OFFENSES *8 U.S.C. § 1427*	Ineligible to be citizen	**UNAVAILABLE** -but may obtain relief through pardon
CONFINEMENT FOR AGGREGATE 180 DAYS *8 U.S.C. § 1427(d)*	Ineligible to be citizen	**UNAVAILABLE** -but may obtain relief through pardon

NOTE: Grounds for Deportation apply to ***lawfully*** admitted noncitizens.

NOTE: A conviction renders an LPR ineligible to be a citizen because it bars a finding of good moral character required for citizenship for up to 5 years under 8 U.S.C. § 1427(d).

NOTE: Illegal reentry (8 U.S.C. § 1326) is itself a felony that may be a ground of deportation or inadmissibility, render your client ineligible for citizenship or asylum, or lead to enhanced sentences based on the underlying crime.

NOTE: Contact U.S. Immigration and Customs Enforcement to determine if any other relief is available.

Federally Funded Contracts, Loans and Licenses

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
DRUG POSSESSION CONVICTION *21 U.S.C. § 862(b)* **DRUG TRAFFICKING CONVICTION** *21 U.S.C. § 862(a)*	Disqualified from receiving any grant, contract, loan, professional license or commercial license provided for or funded by the U.S. government at the discretion of the court	**AVAILABLE** for a possession conviction **NOTE:** Disqualification may last for up to 1 year **AVAILABLE** (except after third offense) for trafficking **NOTE:** Disqualification can last for a maximum of 5 years for a first offense, 10 years for a second offense, and may become permanent after a third offense

Cash Assistance, TANF Funds and Food Stamps

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY DRUG-RELATED FELONY *21 U.S.C. § 862a*	Disqualified from receiving cash assistance or TANF funds and from obtaining food stamps	**UNAVAILABLE** -disqualification is permanent
NOTE: New York does not disqualify those convicted of drug-related felonies, but other states do.		

Public Housing

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY CRIMINAL ACTIVITY THAT: 1. threatens health, safety or right to peaceful enjoyment of the premises by other tenants OR 2. any drug-related criminal activity on or off such premises engaged in by a public housing tenant, any member of tenant's household, or any guest or other person under tenant's control *42 U.S.C. § 1437f(d); NYCHA Regulations*	Public Housing Authority MAY evict your client if there is some evidence of criminal activity, *even if your client is not convicted*	**AVAILABLE** -bar from public housing is discretionary and not mandatory in *most* cases, but see note below
NOTE: If your client is concerned about a public housing application, whether to federally funded housing or NYCHA, you should research the specific offenses that *definitely* bar housing applications versus those that *may* bar housing applications.		

USEFUL WEBSITES

Collateral Consequences of Criminal Charges
http://www2.law.columbia.edu/fourcs/

Collateral Consequences Calculator
http://calculator.law.columbia.edu/

NYSDA Immigrant Defense Project
http://www.immigrantdefenseproject.org/

Sentencing Project Collateral Consequences
http://www.sentencingproject.org/

Reentry Net
http://www.reentry.net/