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# Collateral Consequences of Conviction:

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*A Reminder of Some  
Possible Civil Penalties*

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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.

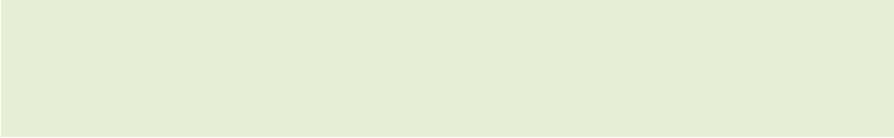
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# CIVIL RIGHTS

## Jury Service

### Federal Jury Service:

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

### New York Jury Service:

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

## Voting Rights

### New York:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<b>ANY FELONY CONVICTION</b> <i>N.Y. Elec. Law § 5-106(2)</i>	Disqualified from voting under N.Y. law while in prison <i>and</i> while on parole	<b>AVAILABLE</b> right to vote automatically restored <i>after</i> parole  <b>NOTE:</b> Your client should be provided with a registration form and informed of his or her right to vote upon completion of parole
<b>NOTE:</b> 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.		

## EDUCATION

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### *Federal Aid*

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<p><b>CONVICTION FOR POSSESSION OF CONTROLLED SUBSTANCE</b>  <i>20 U.S.C. § 1091(r)</i></p>	<p>Ineligible for federal assistance if conviction was during period when receiving aid</p>	<p><b>AVAILABLE</b> for possession conviction</p> <ul style="list-style-type: none"> <li>-1<sup>st</sup> conviction: barred for 1 year</li> <li>-2<sup>nd</sup> conviction: barred for 2 years</li> <li>-3<sup>rd</sup> conviction: permanently barred from receiving financial aid</li> </ul>
<p><b>CONVICTION FOR SALE OF CONTROLLED SUBSTANCE</b>  <i>20 U.S.C. § 1091(r)</i></p>	<p>Ineligible for federal assistance if conviction was during period when receiving aid</p>	<p><b>AVAILABLE</b> for distribution conviction</p> <ul style="list-style-type: none"> <li>-1<sup>st</sup> conviction: barred for 2 years</li> <li>-2<sup>nd</sup> conviction: permanently barred from receiving financial aid</li> </ul>

### *State-Based Aid*

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<p><b>CONVICTION FOR POSSESSION OR SALE OF CONTROLLED SUBSTANCE</b></p>	<p>Depends on the state</p>	<p><b>VARIES</b> by state</p>
<p><b>NOTE:</b> 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.</p>		

## EMPLOYMENT

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### *Federal Licensing Restrictions*

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<b>DEPENDS ON LICENSE SOUGHT</b>	May be automatic or discretionary	<p><b>AVAILABLE</b> depending on conviction</p> <ul style="list-style-type: none"> <li>-if under 21 years old when convicted of simple possession of a controlled substance, crime may be expunged from record</li> <li>-presidential petition</li> <li>-intra-agency appeal after license denial</li> <li>-judicial review of agency licensing decision</li> </ul>

### *N.Y. Licensing Restrictions*

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<p><b>DEPENDS ON LICENSE SOUGHT</b></p> <p><b>NOTE:</b> 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)</p> <p>EX: denial of an accounting license (CPA) where your client has a previous gambling conviction</p>	May be automatic or discretionary	<p><b>AVAILABLE</b></p> <ul style="list-style-type: none"> <li>-with CGC or CRD</li> <li>-entitled to hearings before N.Y. Department of State prior to a license denial</li> </ul>
<p><b>NOTE:</b> Employers must consider CRDs and CGCs when your client applies for jobs.</p>		

## EMPLOYMENT CONT'D

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### *Specific Employment Restrictions*

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<p><b>FELONY CONVICTION</b> for inciting or organizing a riot or civil disorder <i>5 U.S.C. §7313</i></p>	<p>Removal from federal office and ineligibility for employment by U.S. government for 5 years</p>	<p><b>UNAVAILABLE</b> -but ineligibility terminates after 5 years</p>
<p><b>FELONY CONVICTION</b> <i>10 U.S.C. § 504(a)</i></p>	<p>-Ineligible to enlist in any service of the armed forces</p>	<p><b>UNAVAILABLE</b> -unless an exception is made by the Secretary concerned</p>
<p><b>NOTE:</b> There are many other employment restrictions arising from federal convictions that you should research if they are relevant to your client.</p> <p><b>NOTE:</b> As a condition of probation or supervised release, a judge may impose professional restrictions upon occupations that are reasonably related to the conviction.</p>		

## FAMILY RIGHTS

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### *Right to Marry*

**New York:**

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

### *Retaining Custody of Children*

**New York:**

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<p><b>ANY INCARCERATION OF A PARENT THAT CAUSES A CHILD TO BE IN FOSTER CARE FOR &gt; 15 OUT OF LAST 22 MONTHS</b>  <i>N.Y. Soc. Serv. § 384-b(3)(l)</i></p>	<p>Foster care agency may seek termination of parental rights</p>	<p><b>AVAILABLE</b>                      -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</p>



## FAMILY RIGHTS CONT'D

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### Right to Adopt

#### New York:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<p><b>FELONY CONVICTION INVOLVING:</b></p> <p>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</p> <p>B. felony conviction within past 5 years for physical assault, battery or drug related offense</p> <p><i>N.Y. Soc. Serv. Law § 378-a(2)(e)</i></p>	<p>Disqualified from adopting or becoming a foster parent</p>	<p><b>UNAVAILABLE</b></p> <p>-But a recent N.Y. State decision from the Bronx Family Court (<i>In Re the Adoption of Abel</i>, No. A8856/11) found that this law was unconstitutional as-applied so be sure to read the decision and advise your client accordingly</p>
<p><b>ANY CRIME</b></p> <p><i>N.Y. Soc. Serv. Law § 378-a(2)(e)</i></p>	<p>May be disqualified from adopting or becoming a foster parent and those your client lives with may be disqualified</p>	<p><b>AVAILABLE</b></p> <p>-bar is not automatic, but at the discretion of the foster care agency</p>

## GUN CONTROL

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### ***Federal Restrictions***

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

### ***N.Y. Restrictions***

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

## PASSPORT AND DRIVER LICENSE RESTRICTIONS

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### *Passport*

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<b>ANY FEDERAL OR STATE DRUG OFFENSE</b> if crossed international boundary in committing crime 22 U.S.C. § 2714(a)	Passport may not be issued and existing passport may be revoked	<b>AVAILABLE</b> -expires once no longer on parole or supervised release

### *Driver License*

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<b>DRUG OFFENSE</b> N.Y. Veh. & Traf. Law § 510(2)(b)	License suspended for 6 months or more	<b>AVAILABLE</b> -may be eligible for a restricted license during suspension period
<b>OFFENSES INVOLVING AUTOMOBILE</b> (including any felony) N.Y. Veh. & Traf. Law § 510(2)(a)	May trigger automatic license revocation	<b>AVAILABLE</b> -may be eligible for restricted license during revocation period
<b>NOTE:</b> These are N.Y. state restrictions, not federal restrictions.		

## IMMIGRATION

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<p><b>AGGRAVATED FELONY CONVICTION</b></p> <p>8 U.S.C. § 1227(a)(2)(A)(iii);            8 U.S.C. § 1182(a)(2);            8 U.S.C. § 1427(d)</p>	<p>Ground for deportation;            permanently denied reentry;            ineligible to be citizen; ineligible for asylum</p>	<p><b>UNAVAILABLE</b>            -but may obtain relief through pardon</p>
<p><b>CONTROLLED SUBSTANCE CONVICTION</b></p> <p>8 U.S.C. § 1227(a)(2)(B)(i);            8 U.S.C. § 1182(a)(2)(C);            8 U.S.C. § 1427(d)</p>	<p>Ground for deportation;            permanently denied reentry;            ineligible to be citizen</p>	<p><b>UNAVAILABLE</b>            -except possible waiver as a ground of inadmissibility or deportation where first offense of possession of 30g or less of marijuana</p>
<p><b>CRIMES INVOLVING MORAL TURPITUDE (CIMT)</b></p> <p>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)</p> <p>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</p>	<p>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 &gt;1 year)</p>	<p><b>UNAVAILABLE</b>            -but may obtain relief through pardon</p>
<p><b>FIREARM/ DESTRUCTIVE DEVICE CONVICTION</b></p> <p>8 U.S.C. § 1227(a)(2)(C)</p>	<p>Ground for deportation</p>	<p><b>UNAVAILABLE</b>            -but may obtain relief through pardon</p>

## IMMIGRATION CONT'D

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CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<b>DOMESTIC VIOLENCE CONVICTION OR RELATED OFFENSES</b> 8 U.S.C. § 1227(a)(2)(E)	Ground for deportation	<b>UNAVAILABLE</b> -but may obtain relief through pardon
<b>PROSTITUTION AND COMMERCIALIZED VICE</b> 8 U.S.C. § 1182 (a)(2)(D)	Permanently denied reentry	<b>UNAVAILABLE</b> -but may obtain relief through pardon
<b>CONVICTION OF &gt;2 OFFENSES OF ANY TYPE + AGGREGATE PRISON SENTENCE OF 5 YEARS</b> 8 U.S.C. § 1182(a)(2)(B); 8 U.S.C. § 1427(d)	Permanently denied reentry; ineligible to be citizen	<b>UNAVAILABLE</b> -but may obtain relief through pardon
<b>2 GAMBLING OFFENSES</b> 8 U.S.C. § 1427	Ineligible to be citizen	<b>UNAVAILABLE</b> -but may obtain relief through pardon
<b>CONFINEMENT FOR AGGREGATE 180 DAYS</b> 8 U.S.C. § 1427(d)	Ineligible to be citizen	<b>UNAVAILABLE</b> -but may obtain relief through pardon
<p><b>NOTE:</b> Grounds for Deportation apply to <i>lawfully</i> admitted noncitizens.</p> <p><b>NOTE:</b> 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).</p> <p><b>NOTE:</b> 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.</p> <p><b>NOTE:</b> Contact U.S. Immigration and Customs Enforcement to determine if any other relief is available.</p>		

## PUBLIC BENEFITS

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### *Federally Funded Contracts, Loans and Licenses*

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<p><b>DRUG POSSESSION CONVICTION</b> 21 U.S.C. § 862(b)</p> <p><b>DRUG TRAFFICKING CONVICTION</b> 21 U.S.C. § 862(a)</p>	<p>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</p>	<p><b>AVAILABLE</b> for a possession conviction</p> <p><b>NOTE:</b> Disqualification may last for up to 1 year</p> <p><b>AVAILABLE</b> (except after third offense) for trafficking</p> <p><b>NOTE:</b> 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</p>

### *Cash Assistance, TANF Funds and Food Stamps*

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

## PUBLIC BENEFITS CONT'D

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### *Public Housing*

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
<p><b>ANY CRIMINAL ACTIVITY THAT:</b></p> <p>1. threatens health, safety or right to peaceful enjoyment of the premises by other tenants OR</p> <p>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</p> <p><i>42 U.S.C. § 1437f(d); NYCHA Regulations</i></p>	<p>Public Housing Authority <i>MAY</i> evict your client if there is some evidence of criminal activity, <i>even if your client is not convicted</i></p>	<p><b>AVAILABLE</b></p> <p>-bar from public housing is discretionary and not mandatory in <i>most</i> cases, but see note below</p>
<p><b>NOTE:</b> If your client is concerned about a public housing application, whether to federally funded housing or NYCHA, you should research the specific offenses that <i>definitely</i> bar housing applications versus those that <i>may</i> bar housing applications.</p>		

## USEFUL WEBSITES

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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/>