Why Should Defenders Care About Collateral Civil Consequences?

1. You are in a unique position to identify and try to prevent consequences.

2. You can help your clients make better informed choices that will affect their lives for many years.
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.

Often collateral sanctions are **much more severe** in their impact than the “direct” criminal punishment.

Even if you can’t avoid a collateral consequence, **your client can’t choose** between criminal and non-criminal consequences unless **you explain them**.
Improved Criminal Dispositions

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

1. **Improved Criminal Dispositions**

Defenders can be successful at leveraging more favorable pleas – or even outright dismissals – when they are able to educate prosecutors on the draconian consequences for the clients and their families.

Knowledge of these consequences and zealous defense advocacy can preserve many clients’ hard-earned jobs, prevent evictions from subsidized housing, and prevent deportation.

Use collateral consequences to a DA’s basic sense of fairness – focus on consequences that are absurd, disproportionate, or affect innocent family members.

(a) Deportation  
(b) Loss of public housing or Section 8  
(c) Loss of a job or employment license, particularly for a breadwinner  
(d) Inability to attend college because barred from student loans
Knowledge of collateral consequences is a key risk management tool for defenders.

Subsidized housing, family law, public employment or licenses – these are all situations where the client is likely to have an ancillary civil or administrative proceeding pending at the same time as the criminal case.

Clients will often testify or give written statements about the underlying facts, with or without their defense attorney.

If you are familiar with the collateral consequences, you can anticipate these situations and help your client and/or his civil attorney plan the best way to handle these cases.
Discovery Opportunities

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

As a **result** of being prepared for these ancillary proceedings, you can **exploit** them for **additional discovery** not available in the criminal case.

Eviction cases, employment licensing proceedings, driver’s license hearings, school suspension hearings – all **venues** where an administrative or lower court judge is likely to have **subpoena power**.
Critical Times to Assess and Mitigate Consequences

- Plea Negotiations
- Sentencing
- Before Incarceration

Negotiations – trying to minimize civil impact on defendant

Sentencing - Note that sentencing in one case may affect future sentencing under federal sentencing laws. Imprisonment of 60 days or more generally results in much worse consequences than probation.

Defendants with assets may lose them if the defendant is incarcerated (to pay for the cost of 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).

Prosecutors will want to know a lot more about defendant before agreeing to deal.

Especially in deportation cases, may want to assess extent to which defendant is an asset to family, community, etc.

Eviction cases can be harder to argue – the impact is not as obvious. Need more education.
THE RECORD: Expungement and Sealing

Why think about this during plea and settlement negotiations?

Even very minor criminal records can have severe, life-long consequences.
Criminal records are increasingly available: employers, landlords, licensing agencies, etc. WILL find out about your client’s record.
The best criminal record is no criminal record at all.
Decisions made at the plea /sentence stage can affect a lifelong record
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

An individual can have his or her record expunged if he or she:

- Has only one conviction. One felony, one misdemeanor, one conviction period.

- Multiple charges or counts in one proceeding count as multiple convictions.

- It has been five years since conviction or release from imprisonment, whichever is later.

- Juveniles eligible to expunge juvenile adjudication, but must wait until age 24.

- The sentencing court finds that setting aside the conviction is warranted.
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.

Some convictions cannot 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 offences reportable to the Secretary of State.

Non-Traffic offenses (e.g. negligent homicide) that are reportable to
SOS, are often expunged by courts, but record of the offense is kept by SOS. The Attorney General has argued that these offenses can’t be expunged, but there is no controlling case, and many lower courts are still expunging them from court records.
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.

Other Sealing Provisions
There are a variety of mechanisms which allow records to be sealed, which typically involve dismissal of the case upon successful completion of probation.

These include:

7411: first-time drug possession or use (MCL 333.7411)
Holmes Youthful Trainee Act: youths between the ages of 17-21, or youths over 14 who are waived into adult court (MCL 762.11 et seq.)
Spousal Abuse Act: first-time assault and battery cases where the victim is spouse, former spouse, individual with whom the defendant has a child, or individual who has a dating relationship with the defendant (MCL 769.4a)
Drug court: individuals who successfully complete drug court (MCL 600.1068 et seq.)
Minor in Possession: first time offenders (MCL 436.1703)
Kidnapping by a Parent: first time offenders (MCL 750.350a)
Practice of Profession by Health Professional Under the Influence: first time offenders (MCL 750.430)
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?

Answer: If possible, avoid a disposition that results in convictions on both charges. If convicted on only one charge - even a felony - Cliff will be eligible to expunge his record five years after conviction or release from prison, whichever is later.
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?

Answer: Explain to Jerry that if he pleads guilty to three counts of misdemeanor larceny, he will not be eligible for expungement in the future, whereas if he pleads guilty to one count of felony embezzlement, he will be eligible for expungement after five years, assuming he has no further convictions. In light of Jerry’s individual situation, e.g. citizenship status, employment status, housing, explain what the consequences of a felony conviction would be versus those for a misdemeanor. Let Jerry make an informed choice between preserving the possibility of expungement, versus living with the consequences of a felony conviction for at least five years (or for life, if Jerry gets additional convictions).
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?

Answer: First, see if you can get the case dismissed. Can you get a dismissal under HYTA, 7411, or through drug court? If not, try at least to get the number counts down to one. Although the courts have not decided the issue, there is a good legal argument that individuals with juvenile records who have only one adult conviction can get still get the adult conviction expunged. It is worth preserving the option of expungement, is possible.
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

Expungement packet is available in materials.
Access to housing is central to the stability of individuals and their communities. But for people with criminal records – and their families – even basic shelter is hard to find.

Criminal records can prevent your clients from living in subsidized housing, and can also have consequences in private housing.

Housing sanctions are not limited to convictions, and not limited to felony convictions.

Housing issues create tremendous barriers to family reunification upon reentry from jail or prison.

The fallout of criminal proceedings occurs in the civil or administrative realm, and without the basic constitutional protections afforded at criminal trials, and with much different burdens of proof and evidentiary standards.
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

Private Landlords
Can evict an individual for criminal activity related to the tenancy.
Are completely free to deny housing because a person has a criminal record.

Federally Subsidized Housing

**Admission:** Housing authorities can bar admission for a reasonable period of time after criminal activity. There are mandatory, presumptive and discretionary disqualifications, depending on the offense

**Termination/Eviction:** Can terminate or evict for new criminal activity
Mandatory termination for offenses that lead to life-time registration on sex offender registry or for methamphetamine production.
Discretionary termination for illegal drug use, abuse of alcohol, furnishing false information, drug crimes on or off the premises, or engaging in criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants.

Public Housing Authorities can evict entire families for criminal activity, even if the other family members did not know about the criminal activity.

**Evidentiary standards:** neither arrest nor conviction are necessary. PHA needs only some evidence of criminal activity.

**Mitigation:** PHAs can consider mitigating circumstances, including drug and alcohol treatment.
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

Individuals who are required to be register on SORA may not reside in a “Student Safety Zone,” which is defined at an area within 1000 feet of school property.

Some exceptions, primarily for young offenders who are living with parents or guardians,
- offenders under Holmes Youthful Trainee Act who complete probationary period,
- and young adult who was convicted of CSC 4 with child between 13 and 16.
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?

Answer: Argue that if Tara admits guilt, both she and her grandmother can be evicted, even if the grandmother knew nothing about Tara’s pot smoking.

It is true that the family may be evicted anyway, since the Housing Authority does not need a conviction to meet its civil standard of proof that a crime occurred.

However, by admitting guilt, Tara would increase the chances of an eviction.

If you cannot get a dismissal, seek to get the conviction sealed under section 7411 (1st time drug offense).
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?

Answer: Advise the client that pleading to a kidnapping charge with a victim under the age of 18 will make him subject to lifetime registration as a sex offender. Anyone subject to lifetime sex offender registration is barred from participation in the Section 8 program.
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?

Answer: If you cannot get the case dismissed, attempt to get Pete adjudicated under HYTA. As a HYTA offender, Pete can be exempted from SORA. If he is exempted from SORA, he will not be subject to a law that prevents registered sex offenders from living within 1000 feet of a school.

REMEMBER – Defendant would only be eligible for disposition without entry of judgment under HYTA under MCL 750.520(d)(1)(a)(sexual penetration of child between 13 and 16) or 520(e)(1)(a) (4th Degree sexual contact with child between 13 and 16 by person at least 5 years older) because only these provisions do not involve any element of force or coercion.
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

ASK your clients to inform you immediately if they are served with eviction papers – otherwise, they may testify on the record in the housing case about the underlying facts of the criminal case without your knowledge!
Employment is critical for the ability of our clients to support themselves and their families. Having a criminal record severely limits an individual’s employment options.

Problems obtaining employment is the most common reason that we see people with criminal records seeking legal assistance.
Two-thirds of employers will not hire a former offender.

80% of large corporations perform background checks on job applicants; 69% of small businesses do.

Employment is closely linked to recidivism: A 10% decrease in wages is associated with a 10-20% increase in criminal activity and likelihood of incarceration.
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.

Statutory Barriers

Convictions can easily cost defendants their jobs, or their ability to work in their field.

This can sometimes be avoided by pleading to an offense that doesn’t have the same statutory barrier.

Also you can use the fact that a particular conviction will cost a person his or her job to argue for a better result.

Reporting Requirements

In many professions, individuals are required to report if they are convicted of certain crimes, or even if they are simply arrested or arraigned.

Failure to report is often a separate crime – which, if convicted, could prevent expungement.

Always check reporting requirements if your client is employed in long-term care, education/schools services, or daycare; your client has a hazmat license, or you have a reason to believe reporting requirements might apply.
How Can I Find Out About Possible Employment Consequences?

Unfortunately, there are hundreds of occupational restrictions scattered throughout federal and state codes and regulations. There is no centralized source that sets out employment consequences in Michigan.

Your legal outline highlights some of the most common restrictions, but not everything. We will keep adding to and updating this outline.

If you are uncertain whether an occupational restriction applies:

- Check the most recent version of the legal outline, which will be posted on the SADO and MPLP websites.
- Ask the governmental agency regulating that occupation, or look on that agency’s website (see www.michigan.gov).
- Ask a union that organizes such workers.
- Ask an attorney who represents people in that industry.
- Ask your local legal services office.
- Ask your client.
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

**Schools and school services** (e.g. teachers, paraprofessionals, cafeteria workers, janitors, bus drivers, secretaries, etc.: basically anyone who works for a school or an agency that provides services to a school)

Sex Offender - Any conviction resulting in registration on the Sex Offender Registry results in a mandatory, lifetime bar to employment.

Any felony conviction results in a lifetime bar to employment, unless the individual receives written permission from both the superintendent and the school board.

For teachers or others with certification or state board approval certain misdemeanors can also result in loss of certification or state board approval.

**Daycare** (e.g. daycare centers, licensed in-home care, DHS-paid care)

State-paid: extensive list of disqualifications.

Licensed daycare: automatic exclusion for sex offenders; case-by-case review otherwise.

**Long-Term Care** (e.g. nursing homes, home health agencies, adult foster care, psychiatric facilities)

- Complicated tiered disqualification scheme
- Felonies result in disqualification for 10 years to life
- Many misdemeanors, particularly those involving theft, assault, or drugs, result in disqualification for 1-10 years.

**Licensed Professions – check with licensing agency**


**Transportation/Aviation**

**Jobs Hired or Paid by Government, including military service.**
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?

Answer: If convicted of a felony, Dan will lose his job as a security guard, and be unable to support his family. If convicted of a misdemeanor, he can keep working. Note, some misdemeanors will also prevent him from working: Not only felonies are an employment barrier.
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?

Answer: If convicted of misdemeanor negligent homicide, Sharon will be barred from employment in long-term care for five years. Try to get an alternative misdemeanor disposition, such as one that involves dangerous driving, that will not prevent Sharon from working. Or look for one that has a shorter exclusion period.

Sharon will also have to report her arraignment. If she doesn’t, that is a new crime.
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.
Federal law suspends eligibility for any grant, loan, or work assistance for students convicted *any offense* under any Federal or State law involving the possession or sale of a *controlled substance*.

This statute was recently amended to apply only if the offense occurred during a period when the student received student loans.

The period of suspension begins on the date of the conviction and ends after the following intervals:

<table>
<thead>
<tr>
<th>Type of Offense</th>
<th>1st Offense</th>
<th>2d Offense</th>
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</thead>
<tbody>
<tr>
<td>Possession</td>
<td>1 year</td>
<td>2 year</td>
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<tr>
<td>Indefinite</td>
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<td>Sale</td>
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<td>2 years</td>
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<tr>
<td>Indefinite</td>
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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?

Answer: If convicted, Claire will be ineligible for student loans for a year if this is her first offense.

Answer: Claire may be able to get her loans back, if she completes a drug rehabilitation program that meets criteria set out by the Secretary of Education.
Student Financial Aid Practice Tips

- Tell your clients to attend a relevant treatment programs in order to prove rehabilitation for purposes of financial aid.
Bill currently under consideration that would apply parts of the ban to Michigan.
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

There is some good case law in SSI context saying that Social Security Administration must prove that recipient intended to flee the warrant, not simply that the warrant was outstanding.
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?

Answer: In Indiana, as in many states (but so far not in Michigan), individuals with drug-related felony convictions are barred for life from receiving cash assistance or food stamps.
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?

Answer: As his lawyer, you have to advise Tim that he may be charged with another crime for fleeing the state while on bond.

In addition, under federal law, if California finds out that Tim has an open felony warrant, he will be deemed a “fleeing felon,” and his SSI benefits will be terminated.
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

If parent is in prison, the 15 months can elapse very quickly. Parent will have a very difficult time fighting the termination from prison. **Critical issue is making arrangements that keep kids out of foster care.**
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

The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody.

The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

The parent has been convicted of first or second degree murder; criminal sexual conduct in any degree; assault with intent to commit criminal sexual conduct; or a violent offense that subjects the defendant sentencing as a multiple felony offender under MCL 769.10-12.

**Critical issue is whether parent provided for child’s care and custody:** important that clients make legally valid arrangements for their children while they are incarcerated.
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

Power of Attorney and Guardianship aren’t a guarantee against termination, but they are a way for the client to “provide for the care and custody of the child” while incarcerated.

Which approach makes the most sense depends on the length of incarceration. Generally rule is POA for short incarceration, and other legal arrangement for long incarceration.

There are a wide variety of family structures and custodial/guardianship arrangements. What makes sense depends client’s specific circumstances.

**Practice Tip:** It can be difficult to figure out what child placement best reduces the risk of a parental rights termination during the client’s incarceration. Advise clients facing incarceration to consult with a family law or legal services attorney.
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

This is the second most common issue on which we see clients, after employment.
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?

Answer: George must file motions as soon as possible to suspend child support while he is incarcerated. He must file a separate motion in each case. If George does not file these motions, his child support will continue to charge while he is in prison.

Get kits to help with this as necessary.
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?

Answer: Because Rhonda will be in prison more than two years, she faces the possibility that her parental rights will be terminated. In cases where Child Protective Services are already involved, the risk of termination is greater. An important way to reduce that risk is if Rhonda makes arrangements for the child’s care other than foster care. For example, by placing the child in a guardianship with Rhonda’s mother.
Example # 14

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

Answer: Rhonda can sign a power of attorney for up to six months giving her mother authority to take care of the child. Once released, Rhonda can simply revoke the power or attorney. If Rhonda does not sign a power of attorney but simply leaves the child with her mother, her mother could get a guardianship. While a guardianship does not have the finality of a parental rights termination, guardianships can be difficult to set aside if the guardian does not consent.

**Practice Tip:** Draft a power of attorney (or provide a sample) to clients who are custodial parents and who are facing sentences of six months or less. *(Temporary Authorization for Kinship Care document is on website)*
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

Give your clients kits for Kinship Care.

Give clients kits for modification of child support.
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 public housing authority

There are many, severe civil consequences to having a criminal record. “Collateral” consequences are not collateral in effect. For some clients the collateral sanction may be more damaging than the criminal sanction.

So What Can You Do?

Learn about civil consequences, so you can mitigate the damage, and advise your clients about the risks.

Get information from your client to help you identify areas where civil consequences are most significant. (The questionnaire is one tool).

Always advise your clients to attend a relevant treatment program – drugs, alcohol, violence – anything! Such “evidence of rehabilitation” can prove invaluable.
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
Checklist is a valuable tool to include as part of your intake paperwork. There are so many issues. This helps to inform clients and helps you spot issues.

Michigan Poverty Law Program will be launching new reentry site shortly, including materials from Manual on “Providing Civil Legal Assistance to People with Criminal Records”.

Tools for Your Practice

- Checklist
- Training Resources
- On Line Resources
  - www.mlp.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.

Use this when you need information about civil consequences to help you with plea or sentencing negotiations.

On immigration issues you should find an immigration specialist.
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

Use this when clients are working on mitigating consequences outside the criminal justice process. (Family Law, evictions, expungements, etc)

LAD cannot represent incarcerated clients in court proceedings.
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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