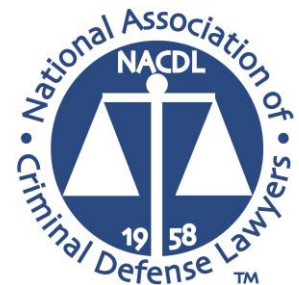


Collateral Consequences of Criminal Convictions

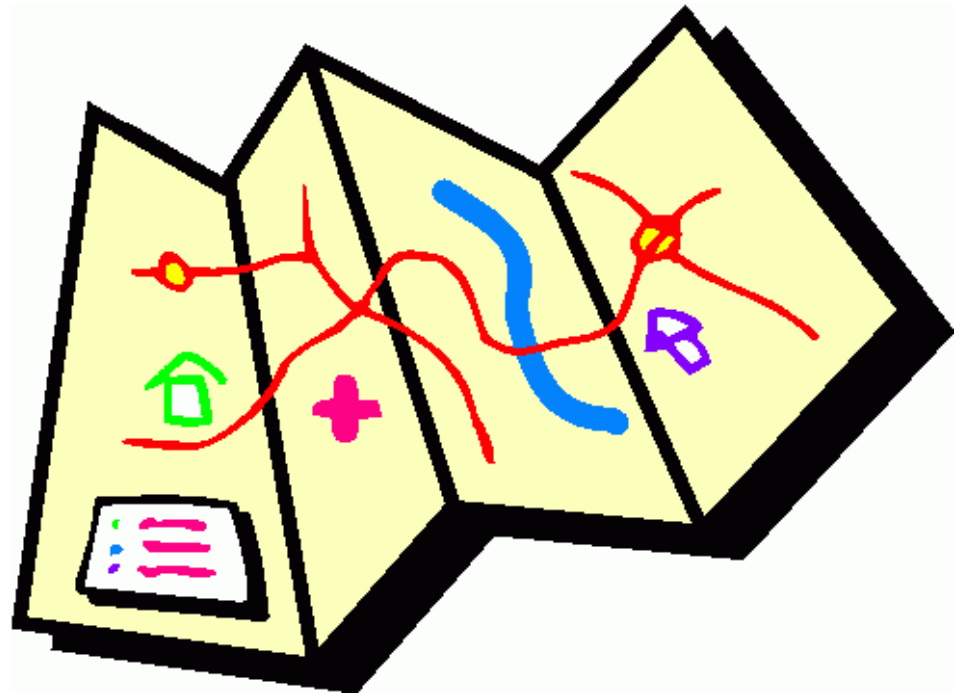
Diane DePietropaolo Price

NACDL Indigent Defense Training Manager

Wilmington, DE May 8, 2015



1. **Why this matters**
2. Obligations
3. Identifying
4. Specific issues
5. Avoiding or mitigating
6. Getting relief





What are collateral consequences?

Anything that is not part of a judicial sentence but happens to your client because of the charge or conviction

ABA Definition

Collateral Sanction

- “Categorical and self-executing”
- Automatic
- Based in statute
- Flow directly from conviction

Discretionary Disqualification

- Based on conduct, not necessarily conviction
- Requires some administrative action

Why do they matter?

- **Difficult to identify**
- **Hard to avoid**
- **Harsh penalties**
- **Long-lasting**
- **Affect whole families**







Can't Get A Job Because Of A Criminal Record? A Lawsuit Is Trying To Change That

APRIL 30, 2015 3:26 PM ET



CARRIE JOHNSON



Listen to the Story

All Things Considered

4:11

+ Playlist

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Transcript



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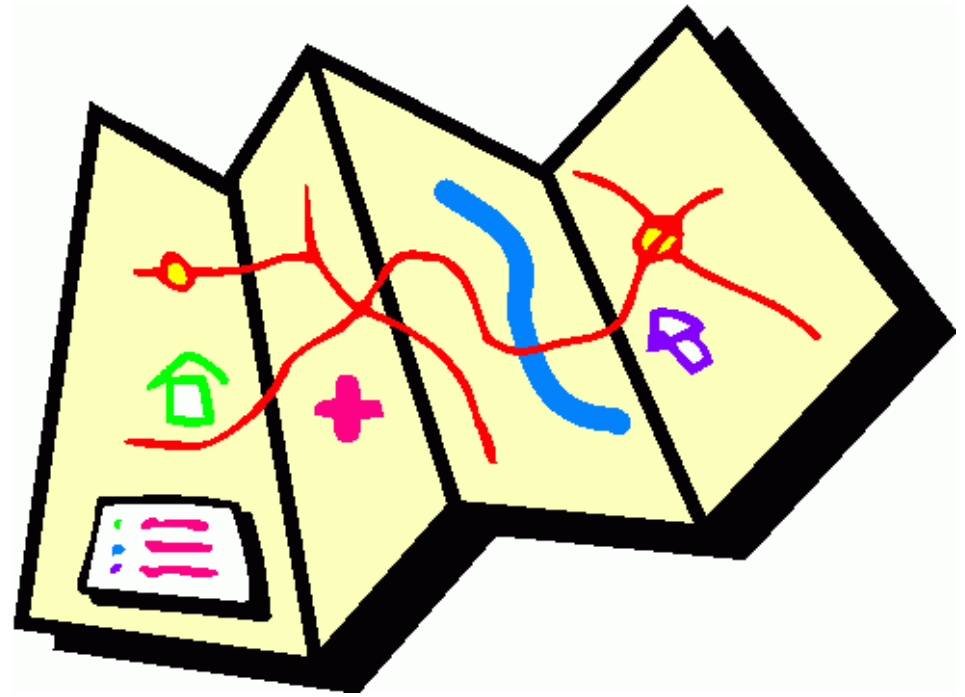
Tyrone Peake says he's been fired from three jobs because a crime he committed more than 30 years ago is still on his record.

Carrie Johnson/NPR





-



***Padilla* and its Logical Extension**



- **Implications beyond immigration**
- **Deficient performance + Prejudice = IAC**

Delaware Rules of Professional Conduct

Preamble - “[a]s advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications.”



Professional Standards

- **ABA Criminal Justice Standard 14- 3.2 – Responsibilities of Defense Counsel**
 - Advise “as to the possible collateral consequences”
 - Commentary – sets a high standard to advise of “all the possible effects of conviction”
- **ABA Defense Function Standard 4-5.1(a)**
 - Advise “concerning all aspects of the case”

Developing Case Law

Failure = IAC

- Possibility of civil commitment (IL, FL)
- Lifetime Supervision (TN)
- Extended parole ineligibility (KY)

Failure ≠ IAC

- Possibility of civil commitment (TX, IA, NJ)
- Forfeit of pension benefits (PA)
- Employment consequences (MN, TN)

What MUST be Addressed

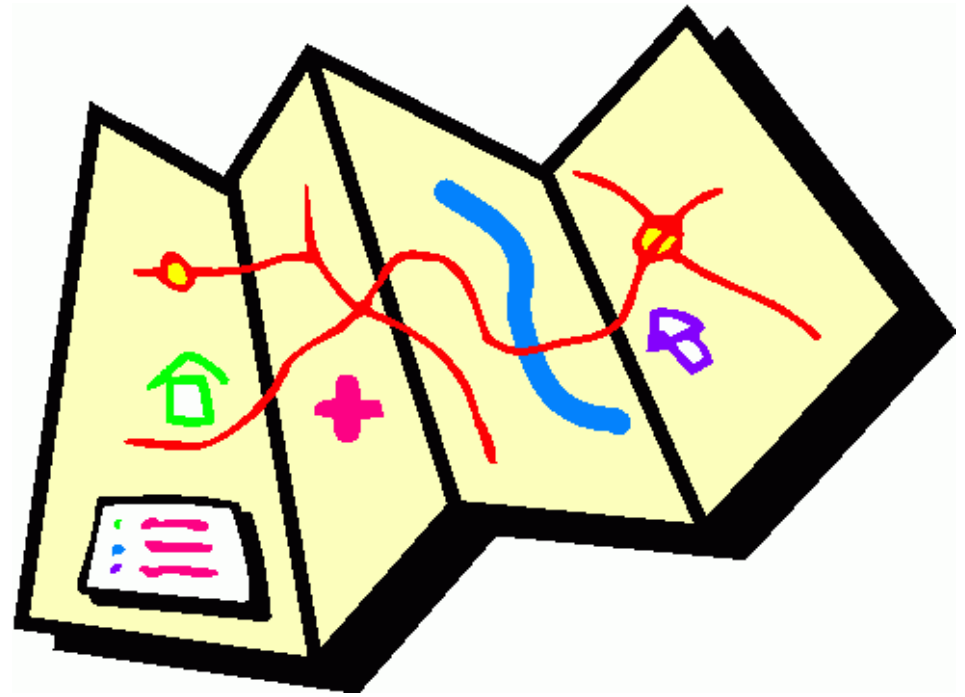
- “Severe and certain” penalties
- Examples:
 - Loss of Driver License
 - Sex Offender Registry
 - Immigration



What SHOULD be Addressed

- Civil or criminal forfeiture
- Mandatory restitution
- Court martial or disqualification from armed services
- Loss of or ineligibility for state licenses
- Loss of civil rights
- Denial of employment
- Loss of federal benefits (incl. housing, student, nutrition, SSI)
- Mandatory HIV testing
- Registration of sex offenders
- Use of conviction in later civil or criminal case
- Immigration consequences

-



Client Interview

- **Born outside the US?**
- **Live in publicly-subsidized housing?**
- **Public employee or hold an employment license?**
- **Receive student aid?**



Resources



NATIONAL INVENTORY OF THE COLLATERAL CONSEQUENCES OF CONVICTION

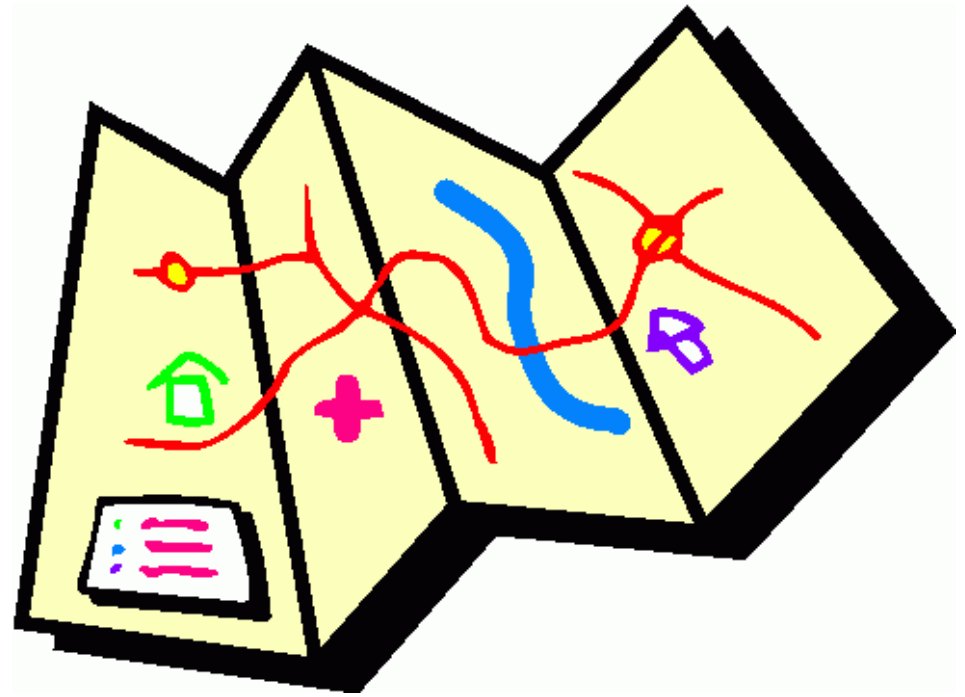
The collateral consequences of a criminal conviction—legal sanctions and restrictions imposed upon people because of their criminal record—are hard to find and harder to understand. Now it will be easier to do both. Congress directed the National Institute of Justice to collect and study collateral consequences in all U.S. jurisdictions, and NIJ selected the ABA Criminal Justice Section to perform the necessary research and analysis. The results are now being made available through this interactive tool.



COLLATERAL CONSEQUENCES RESOURCE CENTER

Collateral Consequences of Criminal Conviction and Restoration of Rights: News, Commentary, and Tools

-



State v. Hernandez



ICE



Immigration

- **Inadmissibility**
- **Deportability**
- **Bar to citizenship**



Defining “Conviction”



Education



- **Drugs = disqualification**
- **Felony = disqualified for SEED**

Housing



Firearms

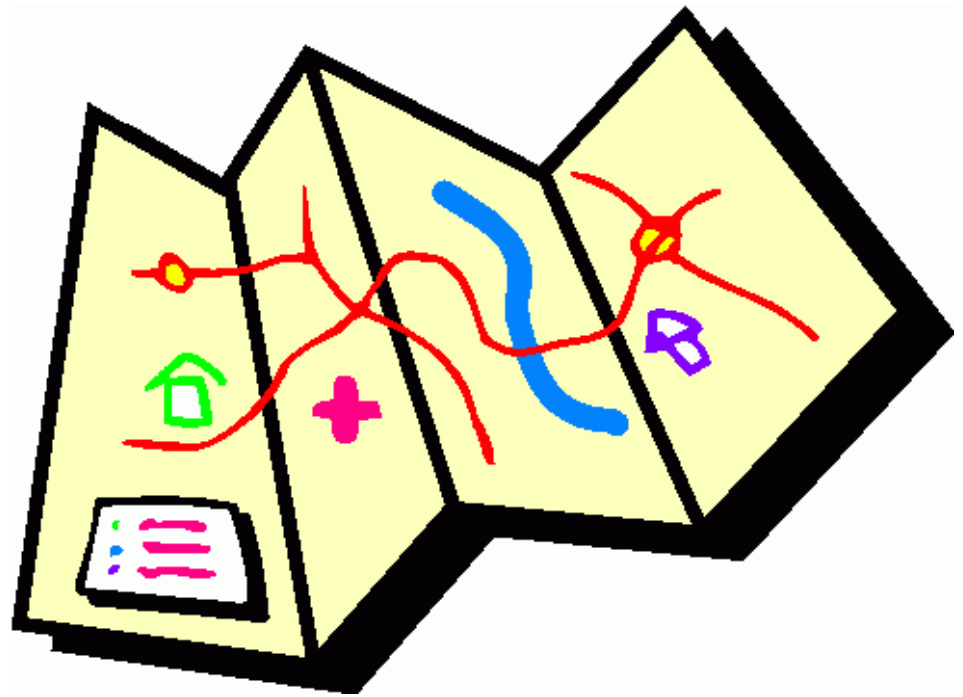


- **Drug Offenses**
- **Domestic violence crimes**
- **Crimes of Violence**

Other Areas of Collateral Consequences



-

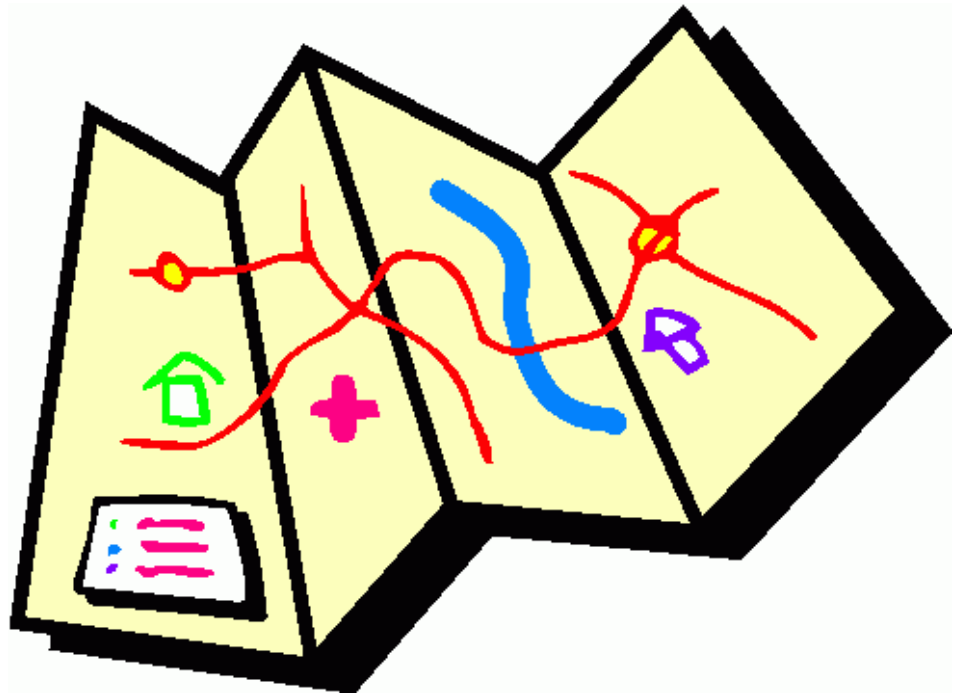


Avoiding or Mitigating Consequences

- **Plea Negotiation**
- **Sentencing**



-



Pardon

- **About 75% of applications in DE are granted**
- **Removes civil disabilities**
- **Pardon board and governor approval**

http://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/Characteristics_of_Pardon_Authorities.pdf

Expungement

- **Generally only available for non-conviction dispositions**
- **Expungement mandatory for first misdemeanors**
- **Discretionary expungement for pardoned offenses**

http://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/Judicial_Expungement_Sealing_and_Set-Aside.pdf

Resources

- **NACDL Restoration of Rights project,**
<http://www.nacdl.org/rightsrestoration/>
- Full DE profile:
http://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/state_narr_de.pdf

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