



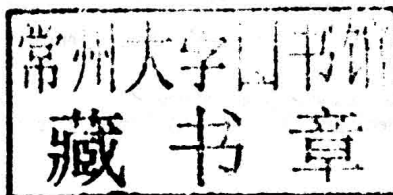
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Dedication

To my beautiful wife Beverly—Todd Berger

To Melissa, Olivia, Sadie, and Ciela for all of your support.—J.C. Lore

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PART I: STRATEGY

§ 1.01 Scope

This chapter covers:

- Why identifying civil collateral consequences of criminal convictions is difficult.
- The importance of identifying civil collateral consequences of criminal convictions.
- How to use this book.

§ 1.02 Objective & Strategy

The purpose of this guide is to provide the judiciary and practicing attorneys an easy to use and efficient resource to identify the civil collateral consequences of criminal convictions. Properly identifying the civil collateral consequences of criminal convictions prior to entering a plea agreement or proceeding to trial furthers several important objectives of defense attorneys, prosecutors and the trial court.

In the State of New Jersey there are over 1,000 separate statutes and administrative code regulations that establish civil collateral consequences following a criminal conviction. These statutes and regulations are separate and distinct from the direct penal consequences of a criminal conviction as provided for in New Jersey's Criminal Code (N.J.S. Title 2C). Most civil collateral consequences of criminal convictions are found in other statutes and regulations outside of the criminal code itself. This easy-to-use guide is a collection of civil statutes and regulations setting forth the collateral consequences of convictions for all criminal code offenses as well as the offense of Driving While Intoxicated (N.J. M.V.C. § 39:4-50). Each statute has been summarized to include relevant information relating to the particular consequence at issue as well as any opportunities for rehabilitation that might exist under that particular statute.

Additionally, the language of some civil statutes may make clear that a conviction for a particular offense automatically imposes a specific penalty or creates an absolute bar to some type of activity without exception or opportunity for rehabilitation. However, other statutes or case holdings are not as clear and are interpreted differently by attorneys. Therefore, it is essential to note that while this guide may identify the civil collateral consequences of a particular criminal conviction, it should be used as a starting point to easily identify statutes of interest that should be explored further so that any potentially fruitful avenues of advocacy may be identified.

PART II: IDENTIFYING SITUATIONS INVOLVING CIVIL COLLATERAL CONSEQUENCES

§ 1.03 CHECKLIST: Identifying Situations Involving Civil Collateral Consequences

- Determine applicable civil collateral consequences prior to beginning plea negotiations
- Provide effective assistance of counsel to client in the context of civil collateral consequences
- Understand applicable civil collateral consequences prior to guilty plea colloquy
- Provide client a stronger opportunity to effectively reenter society

Discussion: See §§ 1.04, 1.05, 1.06, 1.07, *below*.

Authority: U.S. Const., Am. V, VI; N.J. Const., Art. I, ¶ 10; N.J. Ct. R. 3:9-2; *State v. Agathis*, 424 N.J. Super. 16 (App. Div. 2012); *State v. Gaitan*, 209 N.J. 339, 37 A.3d 1089 (2011); *State v. Castagna*, 187 N.J. 293 (2006); *State v. Heitzman*, 107 N.J. 603 (1987);

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§ 1.04 Understanding Plea Negotiations

Identifying the civil collateral consequences of certain criminal convictions may be of particular use to attorneys in the context of plea negotiations. Typically, the prosecutor and defense attorney are primarily focused on crafting an agreement concerning the direct penal consequences of a criminal conviction. This usually entails negotiations focused on the length of incarceration or probation. However, there are a great many civil collateral consequences that attach to convictions for specific types of criminal offenses. These civil collateral consequences often are extremely important to a particular defendant and are not regarded by the defendant as merely collateral.

Practice Tip: Because the civil consequences of a criminal conviction may be extremely important to a criminal defendant, they may very well impact a defendant's decision to accept a particular plea agreement if those consequences were known to a defendant.

In this regard, it is useful for the defense, as well as the prosecution, to recognize

that many times the civil consequences of a criminal conviction are just as important to a defendant as the direct penal consequences of a particular conviction. This is especially true with respect to criminal convictions for less serious offenses that don't by themselves carry significant penal sanctions, but do result in civil penalties that may be important to the defendant.

Identifying these particular consequences will allow the criminal defense attorney to enter plea negotiations fully aware of the relevant penalties his or her client is likely to receive as a result of agreeing to plead guilty to a particular offense. Additionally, prosecutors may be unaware of the civil penalties a defendant will receive when accepting a particular plea agreement. Once these additional penalties are identified, however, they may be relevant factors for each side to consider in crafting a mutually acceptable plea agreement.

For example, a defendant may be willing to accept a particular penal sanction as part of a plea agreement, but may not be willing to accept the plea because certain civil consequences arising from that particular conviction would adversely affect their employment or housing. While a prosecutor may be principally interested in a defendant serving a particular term of probation or imprisonment, she may have no intention of impacting a defendant's ability to work in a particular trade or his housing options. In fact, the prosecutor may agree that such a result would be counterproductive to the defendant's successful rehabilitation and result in a far more negative impact on the community as a whole.

Practice Tip: As a result, the prosecutor may be amenable to structuring the sentence or amending charges in such a manner that the defendant will serve a penal sentence acceptable to the prosecutor, but will not suffer the civil penalties such as loss of employment or housing of which the prosecutor was previously unaware.

In this regard, the awareness of the civil consequences of criminal convictions may benefit both the objectives of the defense and the prosecution in crafting a plea agreement.

It should be noted that while much of the discussion regarding identification of the collateral consequences of criminal convictions has focused on the defense bar and the judiciary, increasingly more impetus has been placed on the need for prosecutors to acknowledge the severity of the collateral consequences as well. To that end, the American Bar Association House of Delegates adopted a resolution in 2007 that states in relevant part:

“FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial, and local governments to encourage prosecutors to inform

themselves of the collateral consequences that may apply in particular cases.” The ABA House of Delegates stated of the above resolution,

The goal is to ensure that prosecutors are knowledgeable regarding the consequences of their charging decisions and sentencing recommendations, beyond the amount of time a person may be incarcerated or placed on probation and the amount of a fine. All participants in the criminal justice system should understand that the collateral consequences of conviction may impose as great a burden or detriment upon a convicted offender as the sentence itself. It is important for prosecutors to exercise their discretion with an eye to the overall impact of a charging decision or sentencing recommendation upon a particular individual.

§ 1.05 Providing Effective Assistance of Counsel

Both the Sixth Amendment of the United States Constitution and the New Jersey Constitution require that a criminal defendant be provided effective assistance of counsel. The relationship between collateral consequences of criminal convictions and effective assistance of counsel will be expanded upon greatly in the legal overview section of this guide. However, it is essential to note that there is a two-pronged test used to determine if a defendant has been provided ineffective assistance of counsel. The first prong of the test contemplates that counsel’s performance will be deemed “deficient” if his acts or omissions “fall outside of the wide range of professionally competent assistance considered in light of all circumstances of the case.” *State v. Castagna*, 187 N.J. 293, 314 (2006) quoting *Strickland v. Washington* 466 U.S. 668, 690 (1984). Assuming counsel’s performance has been deemed deficient, under the second prong of the test, a defendant must prove, “that there is a reasonable probability that, but for counsel’s errors [he or she] would not have pled guilty and would have insisted on going to trial.” *State v. Gaitan*, 209 N.J. 339, 351 (2011).

In the context of informing a criminal defendant of the civil collateral consequences of a particular criminal conviction, a defense attorney must be aware that the first prong of the test relates to whether defense counsel’s failure to inform the defendant of certain civil collateral consequences of a particular criminal conviction was not “within the range of competence demanded of attorneys in criminal cases.” *State v. Agathis*, 424 N.J. Super. 16, 22 (App. Div. 2012). Further, assuming defense counsel’s performance fell outside the range of competence demanded by an attorney licensed to practice law in New Jersey, a court must determine whether the defendant still would have agreed to plead guilty even if he had known of the civil penalties associated with the guilty plea. *Agathis*, 424 N.J. Super. 16, 22 (App. Div. 2012).

Practice Tip: Despite the requirement that defendant must show he otherwise would have proceeded to trial had he been properly informed by defense counsel,