

THE CONSEQUENCES OF CRIMINAL PROCEEDINGS IN NEW YORK STATE

A GUIDE FOR CRIMINAL DEFENSE ATTORNEYS AND OTHER ADVOCATES FOR PERSONS WITH CRIMINAL RECORDS

(April 2009 Edition)

General Practice Tips:

- Always advise your clients to attend a relevant treatment program – drugs, alcohol, violence – immediately. Such “evidence of rehabilitation” will prove invaluable for obtaining or keeping a job, housing, or immigration status.
- Always apply for a Certificate of Relief from Disabilities at sentencing if your client has one or fewer felony convictions.
- Talk to your clients. There is a good chance that they are making statements on the record about relevant facts in ancillary civil proceedings.
- Broaden your strategy. Consider using these ancillary civil proceedings as a way of getting discovery for the criminal case.

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the Arthur Liman Public Interest Program, and the Initiative for Public Interest Law at Yale.*

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DISCLAIMER

This Guide was developed in conjunction with an intensive training offered by the Civil Action Practice at The Bronx Defenders. It is strongly recommended that this Guide only be used after attending the full training.

Nothing contained in this publication should be considered legal advice. We have attempted to provide information that is current and topical. Because the law changes rapidly, however, we cannot guarantee that this information will always be up-to-date, or correct.

** Please contact the Civil Action Practice with any questions or if you are interested in scheduling a training. **

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CIVIL CONSEQUENCES OF CRIMINAL PROCEEDINGS

On June 7, 2006, Penal Law § 1.05(6) was amended to add a new goal, “the promotion of [the convicted person’s] successful and productive reentry and reintegration into society,” to the four traditional sentencing goals of deterrence, rehabilitation, retribution and incapacitation.
(2006 N.Y. Laws 98.)

*Use this amendment to re-frame your criminal case advocacy,
from bail arguments to plea negotiation to sentencing.*

UNDERLYING THEMES TO CONSIDER

1. **These “collateral” consequences are not collateral in effect.** These “collateral” sanctions simply are not collateral in any meaningful way. Courts have labeled them as such as a way to remove them from the realm of constitutional protections in criminal law, including effective assistance of counsel, voluntariness of pleas, proportionality of punishment, adequacy of notice, and retroactivity of application.¹
 - a. In reality, these consequences are the predictable, but often hidden, results of criminal proceedings. Most are effectively hidden from practitioners, judges, criminal defendants, and the public, scattered across dozens of section of state statutes, local laws, and state and local agency regulations and policy.
 - b. They are very easy for legislators to tack them on; seemingly cost-free.
 - c. Often these sanctions are much more severe in their impact than the “direct” criminal punishment.²
2. **These punishments are not limited to felony convictions.** In 2005 in New York State, almost 70% of adult arrests were for misdemeanors or violations, while only 8% were for violent felonies.³ Over 87% of all convictions were for misdemeanors or violations in 2004.⁴ However, some of the most draconian consequences follow from misdemeanors and non-criminal violations:
 - A plea to disorderly conduct, defined by New York law as a non-criminal offense, makes a person presumptively ineligible for New York City public housing for three years.⁵

¹ See, e.g., Gabriel J. Chin & Richard W. Holmes, Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 CORNELL L. REV. 697, 700 (2002).

² “[I]n cases like these, traditional sanctions such as fine or imprisonment are comparatively insignificant. The real work of the conviction is performed by the collateral consequences.” Gabriel J. Chin & Richard W. Holmes, Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 CORNELL L. REV. 697, 700 (2002)

³ New York State Division of Criminal Justice Services, *Adult Arrests, New York State by County and Region - 2005*, at <http://criminaljustice.state.ny.us>. Numbers were similar for New York City: more than two-thirds of adult arrests were for misdemeanors and only 9% were for violent felonies. *Id.*

⁴ Source: DCJS.

⁵ The period of ineligibility runs two years from the expiration of any sentence; the standard sentence for a Disorderly Conduct plea is a one-year conditional discharge. See N.Y. Penal Law § 240.20 (defining disorderly conduct); N.Y. Penal Law § 10.00(6) (defining crime as misdemeanor or felony); N.Y. Crim. Proc. Law § 1.20(39) (defining petty offense as violation); New York City Housing Authority Applications Manual, “Standards for Admission: Conviction Factors and End of Ineligibility Periods—Public Housing Program” Ex. F. The Supreme Court’s decision in *Dep’t of Housing & Urban Dev. v. Rucker*, 535 U.S. 125, 136 (2002), permits public housing authorities to evict entire families for criminal activity even if the tenant did not know of, could not foresee, or could not control the behavior of other occupants or guests. As Michael Barbosa notes, exclusion from low-income

- Two convictions for turnstile jumping make a lawful permanent resident non-citizen deportable.⁶
 - A conviction for any crime bars a person from being a barber, boxer, or bingo operator.⁷
 - Simple possession of a marijuana cigarette cuts off federal student loans for a year.⁸
3. **These punishments are not even limited to convictions.** Significant consequences flow simply from arrest. To provide some context, in New York, more than 1 in 3 people arrested are never convicted of any crime or offense,⁹ but they still suffer drastic consequences from their arrest.
 - a. Data sharing among government agencies has increased exponentially, and there is widespread availability of criminal history data despite various sealing regimes.
 - b. For example, 80% of large corporations perform background checks on job applicants; 69% of small businesses do. Eight years ago, only 51% of large corporations did.¹⁰
 - c. Landlords increasingly run background checks as well, and criminal convictions appear more frequently on routine credit histories.
 4. **There is little practical distinction between “automatic” and “discretionary” consequences.** Most immigration, public housing, and employment decisions technically require the intervening decision of an independent court, agency, or official. But the result is the same.
 5. **A Perfect Storm.** The steady accumulation of collateral sanctions has combined with the exponential increase in the availability of criminal history data to create a “perfect storm.”
 - a. Many commentators have noted that the last twenty years has witnessed an unprecedented accumulation of collateral sanctions that restrict a person’s ability to meet even basic needs.¹¹
 - b. In addition, technology has provided unparalleled access to an ever-increasing range of criminal history data.
 - i) Hundreds of private, commercial background screening businesses access official data sources and create their own repositories.¹² A recent report by SEARCH found that “several companies compile and manage criminal history databases with well in excess of 100 million criminal history records.”¹³

housing can be the equivalent to a sentence of homelessness. See Michael Barbosa, *Lawyering at the Margins*, 11 AM. U. J. GENDER SOC. POL’Y & L. 135, 139 (2002).

⁶ INA § 237(a)(2)(A)(ii), 8 USC § 1227(a)(2)(A)(ii). See also Nina Bernstein, *When a Metrocard Led Far Out of Town*, N.Y. TIMES (October 11, 2004).

⁷ NY GBL § 441; NY Unconsol. Law Ch 7, § 17; NY Exec L §435(2)(c)(1).

⁸ NY PL § 221.05; 20 U.S.C. § 1091(r)(1). On February 8, 2006, this provision was amended to bar student loan eligibility only when the drug conviction occurred during receipt of student loans. See Pub. L. No. 109-171, § 8021, 120 Stat 4 (February 8, 2006).

⁹ Source: New York State Division of Criminal Justice Services, Computerized Criminal History System (as of 1/26/2006). In 2004, 36.7% of people arrested were never convicted.

¹⁰ See Society for Human Resource Management, *SHRM Workplace Violence Survey* (January 20, 2004); Susan Llewelyn Leach, “Bosses Peek into Job-Seekers’ Pasts,” CHRISTIAN SCI. MONITOR, Oct. 13, 2004, at 15.

¹¹ See, e.g., Marc Mauer, *Introduction: The Collateral Consequences of Imprisonment*, 30 FORDHAM URBAN L.J. 1494 (2003); Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 16 (Marc Mauer & Meda Chesney-Lind eds., 2002); Bureau of Justice Statistics, Report of the National Task Force on Privacy, Technology and Criminal Justice Information (Aug. 2001).

¹² SEARCH, The National Consortium for Justice Information and Statistics, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (December 2005).

¹³ *Id.*

- ii) In 2002, for the first time, the FBI performed more fingerprint-based background checks for civil purposes (over 9 million) than for criminal investigations.¹⁴
6. **Breaking the cycle:** These hidden punishments outline the structure that traps low-income clients in recurring encounters with the criminal justice system. These sanctions illustrate that **reentry is a process that begins at arrest**, and each stakeholder in the criminal justice system – prosecutor, judge, defense attorney, and more – has an important role to play.¹⁵

GENERAL CONSIDERATIONS

1. Direct Benefits for Criminal Case

- a. Knowing these hidden civil consequences may help you persuade prosecutors and judges to alter their bail, plea, or sentencing decisions.
 - i) **The Penal Law Requires It.** On June 7, 2006, Penal Law § 1.05(6) was amended to add a new goal, “the promotion of [the convicted person’s] **successful and productive reentry and reintegration into society**,” to the four traditional sentencing goals of deterrence, rehabilitation, retribution and incapacitation. (2006 N.Y. Laws 98.) For more on this change in the law, see http://www.communityalternatives.org/justice_strategies/ReintJust.html.
- b. **Warning:** clients will often testify or give written statements in collateral proceedings (employment hearings, Housing Court, Family Court) about the underlying facts.
 - i) These statements can obviously affect the criminal case.
 - ii) You have to be familiar with the hidden consequences so that you can anticipate and control these statements.

2. Benefits for Your Client

- a. Particularly with **misdemeanor** charges, many clients would rationally choose even a short term of incarceration to avoid these harsh “collateral” consequences.
- b. Look beyond your client: the collateral damage of being arrested often falls most heavily on family members.
- c. Help your client think about these long-term hidden effects of a plea before he accepts it.

3. Remember the **differing burdens of proof**.

- a. The fallout of criminal proceedings occurs in the civil or administrative realm, and without the basic constitutional protections afforded at criminal trials.
- b. Therefore, acquittals or dismissals do not necessarily mean that your client will suffer no further consequences.
 - i) Of course, guilty pleas are conclusive evidence of the underlying facts. *Warn* your clients of this effect – many clients think that they can later deny the facts because they pled guilty only for pragmatic reasons.

CRIMINAL RECORDS

1. Background

- a. Nearly **6 million** adults in New York State – more than one in three, by some estimates – have a criminal record.¹⁶

¹⁴ There were over 9 million “civil” inquiries in 2004 alone. See Maurice Ensellem, *Employment Screening for Criminal Records: Attorney General’s Recommendations to Congress* (Comments of the National Employment Law Project to the U.S. Attorney General, Office of Legal Policy, August 5, 2005) (available at www.reentry.net).

¹⁵ Smyth, *Holistic is Not a Bad Word*, 36 U. Tol. L. Rev. at 501.

¹⁶ This number represents an increase of 656,000 people with criminal histories in New York from 2001 to 2003. See Bureau of Justice Statistics NCJ 210297, *Survey of State Criminal History Information Systems, 2003*, at 15 (February 2006); U.S. Census Bureau, *Table 1: Annual Estimates of the Population for Counties of New York: April*

- b. In 2004, there were 519,590 arrests in New York State; 105,429 resulted in some term of incarceration.¹⁷
 - i) The FBI reports that there were over 14 million arrests in 2004 nationwide.¹⁸
- c. In 2004, there were 44,768 pleas to Disorderly Conduct in New York City alone.¹⁹

2. Access to Criminal Records

- a. Technology has provided unparalleled access to an ever-increasing range of criminal history data. Data sharing among government agencies has increased exponentially, and there is widespread availability of criminal history data despite various sealing regimes. In New York State, dozens of agencies maintain their own computerized records of arrests and prosecutions, including DCJS, OCA, NY State Police, and local law enforcement.
- b. **FBI**
 - i) Maintains their own criminal history files for federal proceedings and many state proceedings. Generally, will comply with a state's sealing or expungement laws, but no guarantee.
 - ii) In 2002, for the first time, the FBI performed more fingerprint-based background checks for civil purposes than for criminal investigations.²⁰
- c. **Division of Criminal Justice Services (DCJS)**
 - i) Criminal justice rap sheets sent after arrests contain the most information (with the exception of sealed arrests).
 - ii) Civil inquiries – for employment licensing purposes, for example – have less information.
 - iii) Most are fingerprint-based, but certain agencies are authorized to search by NYSID.
- d. **OCA Criminal History Record Search.** The Office of Court Administration in 2003 began offering a statewide criminal history record search for \$52.
 - i) The search is based on name and date of birth, and anyone can request a search.
 - ii) The OCA record will reveal convictions for violations – **and will list the original charges** – and frequently will show dispositions that should be sealed under CPL § 160.50. Outright errors are extremely common.
 - iii) Landlords and private employers use this search routinely.
 - iv) **Practice Tip:** Because of the recent, easy access to OCA criminal histories, attorneys should **no longer assure their clients that records of violations convictions will be sealed.**
 - (1) Always warn clients that employers and others can easily discover the original charges underlying a sealed violation conviction because the court records remain public.
- e. **OCA – WEBCRIMS**
 - i) Gives detailed information on all pending cases in all criminal courts in New York City and Nassau and Suffolk Counties, the County Courts in the Ninth Judicial District (which includes Westchester, Rockland, Orange, Putnam and Dutchess Counties), the County Court in Erie County, and the Buffalo City Court.
 - ii) Also displays universal summons case information for New York City.
- f. **Local Law Enforcement**
 - i) NYPD maintains its own criminal histories of all NYC arrests (electronic arrest paperwork).
 - ii) A person can request a fingerprint-based Good Conduct Certificate for NYC arrests.

1, 2000 to July 1, 2005 (finding that population of New York in 2003 was 19,228,031). By December 31, 2003, over 71 million individuals had state criminal histories nationwide.

¹⁷ Source: New York State Division of Criminal Justice Services.

¹⁸ Uniform Crime Reporting Program.

¹⁹ Source: New York State Division of Criminal Justice Services.

²⁰ There were over 9 million “civil” inquiries in 2004 alone. See Maurice Ensellem, *Employment Screening for Criminal Records: Attorney General's Recommendations to Congress* (Comments of the National Employment Law Project to the U.S. Attorney General, Office of Legal Policy, August 5, 2005) (available at www.reentry.net).

- g. **Credit Reports**
 - i) Records of criminal convictions can remain on the report indefinitely. Frequently inaccurate or incomplete, and can include violations.
 - ii) Credit and consumer agencies maintain criminal history information under the federal and state Fair Credit Reporting Act.
- h. **Private Databases**
 - i) Hundreds of private, commercial background screening businesses access these data sources and create their own repositories.²¹
 - ii) A recent report by SEARCH found that “several companies compile and manage criminal history databases with well in excess of 100 million criminal history records.”²² The market for these services is tremendous.
- 3. **Errors in Criminal Records**
 - a. The problems arising from increased availability of criminal history data are only compounded by serious questions about reliability.
 - b. **DCJS**
 - i) The most recent study in New York found that 87% of DCJS rap sheets, the official state repository, contained some kind of error.²³
 - c. **FBI**
 - i) A recent report conducted for the National Association of Professional Background Screeners found a litany of serious problems with FBI reports, including failure to report dispositions of arrests, lack of timeliness in reporting dispositions, and ineffective linking of the proper individual and case.
 - ii) Perhaps the most damning finding was that of 174 million arrests on file, only 45% have dispositions.²⁴
 - d. **Private Databases**
 - i) Significant problems include criminal identity theft leading to improperly attributed convictions;²⁵ false positives and mismatches based on non-biometric background checks;²⁶ and negligence by commercial vendors.²⁷
- 4. **Reviewing the Rap Sheet:** Review the rap sheet with your client to make sure that it is accurate, and to ensure that all relevant records have been sealed properly.
 - a. You will receive a copy of your client’s rap sheet as a matter of right under CPL § 160.40.
 - b. Review it for errors ASAP so that you can correct them.
 - i) **Warning:** The most recent study in New York found that **87%** of DCJS rap sheets contained some kind of error.²⁸
 - ii) Errors on the rap sheet affect bail, plea negotiations, and sentencing.
 - c. **Common errors**
 - i) Arrests without dispositions;

²¹ SEARCH, The National Consortium for Justice Information and Statistics, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (December 2005).

²² *Id.*

²³ Legal Action Center, *Study of Rap Sheet Accuracy and Recommendations to Improve Criminal Justice Recordkeeping* (1995).

²⁴ Craig N. Winston, *The National Crime Information Center: A Review and Evaluation* (August 3, 2005) (available at www.reentry.net).

²⁵ Sharon Dietrich, *Expanded Use of Criminal Records and Its Impact on Reentry*, Presented to the American Bar Association Commission on Effective Criminal Sanctions (March 3, 2006) at 8 (available at www.reentry.net).

²⁶ *Id.* at 9-10.

²⁷ *Id.* at 11.

²⁸ Legal Action Center, *Study of Rap Sheet Accuracy and Recommendations to Improve Criminal Justice Recordkeeping* (1995).

- ii) Unsealed arrests or convictions;
 - iii) Open bench warrants.
 - d. **Warning:** The failure to seal records can lead to *serious consequences*, often without any remedy.
 - i) ****If a person is identified from a mugshot or fingerprint that should have been removed from the police file and destroyed under the sealing statute, then there is *no remedy* in the criminal case. You cannot suppress the ID.**
 - e. **Practice Tip:** after Arraignment is a good time to get Certificates of Disposition for the incorrect items from the Court Clerk and to begin applying for Certificates of Relief from Disabilities, if necessary (see below).
- 5. Sealing Records for People Charged as Adults** (CPL §§ 160.50, 160.55, & 720.35)
- a. New York State does not delete or expunge records – it only seals them.
 - i) Sealing is automatic for all relevant dispositions after 11/1/91.
 - ii) For pre-1991 convictions, you must get a sealing order from the sentencing court (but the sealing remains a matter of right). The procedure varies, so contact the clerk of court of the sentencing court for instructions.
 - b. **Misdemeanor and felony convictions:** can **never** be sealed.
 - i) They remain on a person’s criminal record for life.
 - ii) Address these convictions with certificates to demonstrate rehabilitation (see next section).
 - c. **Favorable Dispositions:** CPL § 160.50 seals arrests that resulted in a disposition favorable to the defendant (*e.g.*, acquittal, dismissal, decline prosecution, ACD).
 - i) **Legal Nullity:** Under CPL § 160.60, “[u]pon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this chapter, the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest and prosecution. The arrest or prosecution shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling. Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution.” (Emphasis added.)
 - ii) (See Employment section on Rights & Protections below.)
 - d. **Violations:** CPL § 160.55 seals arrests that led to a conviction for non-criminal offenses (violations), EXCEPT convictions for DWI and prostitution (loitering).
 - i) **Warning:** Private criminal records searches will reveal convictions for violations because court records are NOT sealed under CPL § 160.55 and the Office of Court Administration sells this information to private companies.
 - e. **Marijuana Violations:** CPL § 160.50(3)(k) seals arrests that led to a **marijuana violation** under P.L. § 221.05 (after 3-year waiting period).
 - f. **Youthful Offender Adjudications** (CPL § 720.35)
 - i) YO Adjudications are confidential, but do appear on DCJS rap sheets issued for criminal justice purposes.
 - ii) All official records and papers relating to the case are confidential and may not be made available to any person or public or private agency.
 - g. **Practice Tip – Limitation on Use of Sealed Records**
 - i) No unsealing or use in criminal sentencing (or bail). *Katherine B. v. Cataldo*, 5 N.Y.3d 196 (2005).
 - (1) **Note** that it is illegal to use **Domestic Incident Reports (DIRs)** from sealed arrests (including voided arrests, declined prosecutions, dismissed cases, or sealed violations) for any purpose in another case, including a new criminal case.
 - ii) No unsealing or use in employment disciplinary proceedings. *Matter of Joseph M. v. New York City Board of Education*, 82 N.Y.2d 128, 134 (1993); *In the Matter of Scott D.*, 13

- A.D.3d 622 (2d Dept. 2004); *Application of Police Commissioner of the City of New York*, 131 Misc. 2d 695 (Sup. Ct. N.Y. Co. 1986).
- iii) No unsealing or use in eviction proceedings. *People v. Manauri R.*, NYLJ 21, col. 1 (Sup. Ct. Bronx Co. Oct. 22, 2004); *People v. Canales*, 174 Misc. 2d 387 (Sup. Ct. Bronx 1997).
 - iv) No unsealing or use in property forfeiture proceedings. *Property Clerk v. Bonilla*, NYLJ 20, col. 1 (Sup. Ct. New York Co. Nov. 25, 2002).

6. Juvenile Records

- a. Juvenile Delinquency Favorable Termination
 - i) Sealed automatically (Fam. Ct. Act § 375.1)
- b. Family Court Finding Sealed by Motion
 - i) FCA § 375.2 permits sealing of records when there is an actual finding of delinquency that is less than a designated felony. Sealing is not automatic, the respondent must file a formal motion with the court, and the motion cannot be made until the respondent's sixteenth birthday. Records sealed pursuant to 375.2 are available if there is a subsequent adult conviction.
- c. Family Court Expungement (Fam. Ct. Act § 375.3)
- d. Privacy of Family Court Records (Fam. Ct. Act § 166)
- e. Restricted Use of Family Court Records (Fam. Ct. Act § 381.2)

CERTIFICATES TO DEMONSTRATE REHABILITATION

1. General

- a. These certificates are critical tools for avoiding the fallout of convictions.
- b. They remove statutory bars imposed because of convictions, and provide a rebuttable "presumption of rehabilitation."
 - i) While they generally will **not avoid deportability or inadmissibility** for non-citizens, they **may** have a positive effect on some forms of discretionary relief.
- c. They appear on a person's rap sheet beside relevant convictions.

2. Certificate of Relief from Disabilities (CRD) (Corr. L. §§ 701-703)

- a. *Eligible Persons*: Granted to persons with only one felony and/or any number of misdemeanor convictions (you must get a certificate for each conviction). Includes out-of-state and federal convictions.
- b. *Effect*: Relieves most automatic forfeitures and disabilities, including felony disenfranchisement, that are automatically imposed by law as a result of the conviction.
 - i) It can be limited to particular disabilities, or specifically except certain disabilities, such as those against firearms possession.
 - ii) The court or Board of Parole may at any time issue a new CRD to enlarge the relief granted.
- c. *Considerations*: The issuing court or Board of Parole must determine that the relief to be granted by the CRD is consistent with (1) the rehabilitation of the person, and (2) the public interest.
- d. **Issuance by Court of Sentencing** (Corr. L. § 702)
 - i) *Eligible Convictions*
 - (1) All misdemeanors and violations;
 - (2) Single felony that did not result in incarceration in a state correctional facility (*e.g.*, sentence was probation, conditional discharge, or suspended sentence).
 - ii) *Procedure*
 - (1) *At Sentencing*
 - (a) Court can grant a CRD at sentencing;
 - (b) CRD here can grant relief from forfeitures as well as disabilities.
 - (c) Section 200.9 of the Uniform Rules for NYS Trial Courts **requires** that courts **either** grant a CRD at sentencing **or** advise the defendant of his or her eligibility to apply later. 22 NYCRR § 200.9.

- (2) *Any Time After Sentencing*
 - (a) Client must make a verified application to the court. Usually, the local probation department investigates.
 - (i) Check with the Clerk of the court of sentencing for the local application procedures.
 - (b) CRD here can only grant relief from disabilities, not forfeitures.
- iii) *Temporary Certificates*: If the court has imposed a revocable sentence (probation or Conditional Discharge), the CRD will be temporary until the court's authority to revoke the sentence has expired.
 - (1) The court *may* revoke the temporary certificate for violations of conditions of the sentence, and *must* revoke it if the defendant is remanded to a *state* correctional institution.
 - (2) If the certificate is not revoked, it becomes permanent at the expiration of the probation or CD.
- iv) **Practice Tip**: ALWAYS apply for a CRD at the time of sentencing for any eligible offense, *especially* for violations such as Disorderly Conduct and Harassment.
 - (1) **Court Rules Require It**. Section 200.9 of the Uniform Rules for NYS Trial Courts requires that courts either grant a CRD at sentencing or advise the defendant of his or her eligibility to apply later. 22 NYCRR § 200.9.
 - (2) **The Penal Law Requires It**. On June 7, 2006, Penal Law § 1.05(6) was amended to add a new goal, "the promotion of [the convicted person's] **successful and productive reentry and reintegration into society**," to the four traditional sentencing goals of deterrence, rehabilitation, retribution and incapacitation. (2006 N.Y. Laws 98.) For more on this change in the law, see http://www.communityalternatives.org/justice_strategies/ReintJust.html.
 - (3) You may have to give the Court advance notice so that it can refer your client to Probation for investigation. However, some judges will agree to issue a CRD at sentencing without investigation, particularly for violations.
 - (4) Judges may be sympathetic to hidden sanctions that are grossly disproportionate to the offense, such as the 2-year ineligibility for New York City Public Housing after a conviction for a violation.
 - (5) **Myth**: Some judges believe that they cannot issue CRDs for violations.
 - (a) In fact, CRDs are often **most** useful for violations convictions, and Corr. L. § 701(1) explicitly authorizes issuance of CRDs for any crime or "offense." It can be helpful to provide the court with a copy of the statute.
 - (6) **Myth**: Some judges and prosecutors oppose CRDs because they think criminal records will be sealed as a result.
 - (a) In fact, CRDs have nothing to do with sealing, and they do not restrict access in any way to the records of criminal convictions.
 - (7) At the **very least**, ask the court to grant a CRD relieving Housing, Employment, and Voting disabilities.
 - (8) **Priorities**: Judges have proven resistant to large-scale grants of CRD's, particularly at arraignments. If you must make a reasoned choice of when to request CRD's at sentencing, the *top priority* should be those clients who have *no prior record*. (A client with multiple convictions must apply for a CRD for each offense.)
- e. **Issuance by Board of Parole** (Corr. L. § 702)
 - i) *Eligible Persons* (only one felony conviction permitted)
 - (1) Persons who have been incarcerated in a state correctional facility, and have been released;
 - (2) Persons who reside in NY with convictions from any other jurisdiction (including federal).

- (3) **Warning:** out-of-state residents who want a NY employment license but have federal or out-of-state convictions may not be eligible!
 - ii) **Procedure:**
 - (1) Request an application from:
 - New York State Division of Parole
 - Certificate Review Unit
 - 97 Central Avenue
 - Albany, NY 12206
 - (518) 485-8953
 - (2) Applicant will be investigated by the Parole Board. The process usually takes several months.
 - (3) The CRD can be issued at the time of release from the NYS institution or any time thereafter.
 - iii) **Temporary Certificates:** If issued while person is still on parole or supervised release, the CRD is temporary until discharge and can be revoked by the Board for violation of the conditions of parole or release.
 - f. **Practice Tip:** If client is still on probation or parole, or has not finished her sentence, talk to her probation/parole officer. They can start the application process and have a temporary certificate issued.
 - g. **Limitations**
 - i) Generally, does not affect driver's license suspensions (see below)
 - ii) Does not lift the felony bar to holding public office. Corr. L. § 701(1). (Must obtain Certificate of Good Conduct) (see below).
 - iii) Does not trump discretionary considerations in employment and licensing ("good moral character," etc.).
 - h. **Forms**
 - i) CRD Application (Form DP-52): <http://www.courts.state.ny.us/6jd/forms/dmv/dp-52.pdf>
 - ii) CRD (Form DP-53): <http://www.courts.state.ny.us/6jd/forms/dmv/dp-53.pdf>
 - (1) This is the actual CRD that a judge can sign at sentencing.
- 3. Certificate of Good Conduct** (Corr. L. §§ 703-a & 703-b)
- a. **Eligible Persons**
 - i) Any person "previously convicted of a crime in this state." Corr. L. § 703-b(1).
 - ii) Any person "previously convicted of a crime in any other jurisdiction." Corr. L. § 703-(b)(2).
 - iii) Therefore, this Certificate can be granted for any "crime," but not for non-criminal offenses such as violations.
 - b. **Effect:** The CGC has the same effect as the CRD, except that it is the only certificate that lifts felony or misdemeanor bars to "public offices."
 - i) If person is applying for a "public office" (see below), she can apply for this certificate even if she has only one felony conviction or only misdemeanor convictions.
 - c. **Waiting period** (based on most serious conviction): Must wait an amount of time after last conviction, payment of fine, or release from prison or parole, whichever is later
 - i) A & B felonies, 5 years from completion of sentence;
 - ii) C, D, E, 3 years.
 - iii) Misdemeanors only, 1 year
 - d. **Process:** Apply to the same NYS Division of Parole office listed above.
 - i) Process takes at least 6 months, but may be faster if the applicant or his attorney attaches a letter explaining need for expediting (*e.g.*, when a job or occupational license is at stake).
 - ii) In 2006, Parole issued approximately 250 Certificates of Good Conduct.
 - iii) **Practice Tip:** As a matter of policy, Parole issues all Certificates with two explicit exemptions from relief: (a) firearms, and (b) holding public office.

- (1) Therefore, a person must specifically ask for relief from these disqualifications in her Certificate application.

IMMIGRATION

1. **Practice Tip:** USE THE HOTLINE: The Immigrant Defense Project runs a hotline for criminal defense attorneys and immigrant clients and families on Tuesdays and Thursdays from 1:30 p.m. to 4:30 p.m. at 212-725-6422, or write to the Project at 3 West 29th Street, Suite 803, New York, NY.
2. **Practice Tip:** EVERYONE should get a copy of the NYSDA manual: *Representing Noncitizen Criminal Defendants in New York State*.
 - a. Other resources: Immigrant Defense Project website: www.immigrantdefenseproject.org. Includes updates, manuals, alerts, briefs, and information on the national **Defending Immigrants Partnership**, a national effort to ensure that immigrants in criminal proceedings nationwide are properly counseled regarding the immigration consequences of choices that they must make when accused of a crime in criminal proceedings.
 - b. See also the immigration materials available on Reentry Net/NY: www.reentry.net/ny.

EMPLOYMENT

1. **Public Employers**
 - a. Examples
 - i) Any City, Town, or Village employee.
 - ii) MTA or NYCTA
 - iii) Department of Education
 - b. **Information Sharing:** DCJS automatically notifies many public employers and licensing agencies about arrests of their employees or licensees. This notification occurs when a public employer has run a criminal records check on your client in the past.
 - i) **Practice Tip:** Look carefully at the rap sheet. As a general rule, if the client's rap sheet notes that a public employer or licensing agency has run a check, then that entity will be notified of subsequent arrests.
 - c. **Immediate Suspension**
 - i) Often, therefore, an arrest leads to immediate suspension.
 - ii) **Hearing:** Usually, the employee can request a hearing on the suspension, but to be successful your client must waive her 5th Amendment rights at the hearing and testify about the alleged criminal activity.
 - (1) You must make a strategic decision about how to proceed, depending on the potential impact on the criminal case.
 - (2) **Practice Tip:** You *may* be able to obtain discovery through administrative subpoenas or if the police officers or complaining witness testify.
 - (3) **Warning:** Clients will often try to have their suspension lifted by sending written explanations of the alleged criminal incident to the licensing agency.
 - d. **Broad Discretion by Employer:** most public employers are entitled to terminate or suspend based on any "immoral conduct," and this gives them immense discretion.
 - i) A favorable termination in the criminal proceeding will often lead to reinstatement. However, because the employer only has to satisfy an administrative burden of proof, the employer *can* terminate based only on hearsay (e.g., a criminal complaint).
 - ii) Some agencies are better than others – find out the character of the agency (the Union rep or legal department is often your best source of information).
 - iii) The apparent relevance of the conviction to the position will be important for informal advocacy in this area.

- (1) However, Correction Law Article 23-A and NYS Human Rights Law protections apply only to hiring, not firing (see below).
- e. **Practice Tip 1:** ALWAYS contact your client's union legal department to determine the effect of future pleas in the case. Get them involved as soon as possible! Some public employers, such as the New York City Housing Authority, will attempt to terminate based on ACD's.
 - f. **Practice Tip 2:** Find out if your client has a duty to report new arrests to his public employer. An employer will often find out through routine reporting from the Police Department or DCJS, but the failure to report can be an independent cause for termination.
- 2. Licensing Regimes (over 100 in NYS)**
- a. Examples
 - i) Security Guard Registration (through NYS Department of State)
 - ii) NYC Department of Education (including custodial staff)
 - iii) Taxi & Limousine Commission
 - iv) Real Estate Broker's license
 - v) Locksmith
 - b. All of the points about public employers also apply to licensing agencies.
 - c. The Legal Action Center has an excellent compilation of the licensing regimes and their bars to eligibility. The "Occupational Licensing Survey" is available on Reentry Net/NY (www.reentry.net/ny).
- 3. Public Offices**
- a. Examples: police officer; firefighter; court officer; law enforcement jobs; notary public; some elective offices.
 - b. Should ask the employer or licensing agency whether it's a public office and whether there's a bar for felony or misdemeanor convictions.
 - i) If so, the only way to lift the bar is a Certificate of Good Conduct.
- 4. Employment Discrimination – Rights & Protections**
- a. **Post Arrest or Conviction**
 - i) **Disparate Impact on the Basis of Race (Federal law)**
 - (1) Under Title VII of the Civil Rights Act of 1964, the EEOC has determined that an employer's policy or practice of excluding individuals from employment on the basis of their conviction records, absent business necessity, has an adverse impact on African-Americans and Latinos in light of statistics showing that they are convicted at a rate disproportionately greater than their representation in the population.
 - (2) An employer can show business necessity when the applicant is engaged in conduct that is particularly egregious or related to the position in question.
 - (3) This cause of action is often called the Griggs theory of the disparate racial impact of any policy under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(k).
 - ii) **Federal and State Fair Credit Reporting Acts (FCRA) (Employment & Housing)**
 - (1) Most private employers and landlords receive criminal history information from a variety of consumer reporting agencies (CRAs), rather than official sources. A number of national studies have shown that reports from these CRAs are notoriously incorrect or incomplete. FCRA establishes standards of accuracy and procedural rights if a report is the basis for adverse decisions. *See* 15 U.S.C. § 1681 *et seq.*
 - (2) NY FCRA prohibits reporting non-criminal convictions, such as violations. *See* Gen. Bus. L. § 380 *et seq.*
 - (3) These protections can be used to promote fairness in both employment and housing decisions.
 - iii) **Arrests without convictions (Favorable Dispositions)**
 - (1) NYS Human Rights Law (Exec. L. § 296(16)) prohibits public and private employers and occupational licensing agencies from denying any individual a job or license (or otherwise discriminating against that person) because of any arrest that did NOT result in

a conviction. (These arrests should be sealed under CPL § 160.50 and viewed as a legal nullity under CPL § 160.60.)

- (2) Does NOT apply to police or law enforcement jobs.
- (3) NYC Human Rights Law (NYC Admin. Code § 8-107(11)) offers similar protection.

iv) **Convictions**

- (1) Provisions: Corr. L. §§ 750-755 (Art. 23-A) and NYS Human Rights Law (Exec. L. § 296(15) & (16)).
- (2) **Youthful Offender Adjudications & Violations Convictions:** Effective November 1, 2007, an amendment to the Human Rights Law prohibits private and public employers and licensing agencies from asking job-seekers about **Youth Offender adjudications and sealed violations** (petty offense convictions). The bill specifically states that employers and licensing agencies cannot "make any inquiry about, whether in any form of application of otherwise, or to act upon adversely to the individual involved" any Youthful Offender adjudication or sealed violation. 2007 N.Y. Laws 639.
 - (a) This provision does not apply to an application for employment or membership in any law enforcement agency.
 - (3) Illegal for employers and licensing agencies to have a policy of not hiring any person with a criminal history – they must consider each applicant individually.
 - (4) Illegal for employers and licensing agencies to deny any person with a criminal record a job or license because of his past conviction(s) UNLESS:
 - (a) The conviction(s) are “directly related” to the job in question, or
 - (b) Hiring or licensing that person would create an “unreasonable risk” to the safety of people or property.
 - (c) Corr. L. § 753 lists factors that must be considered in determining whether a conviction meets the above criteria.
 - (5) Applicant can demand a written statement from employer or licensing agency detailing reasons for denial. The statement must be sent within 30 days. (Corr. L. § 754.)
 - (6) NYC Human Rights Law (NYC Admin. Code § 8-107(10)) offers similar protection.

- v) **Warning:** these protections generally only apply to job *applicants*, not current employees. Current employees or license-holders are protected from termination only if the conviction preceded their employment or granting of a license and they did not misrepresent their criminal history at application. 2007 N.Y. Laws 284.

vi) **Pre-Employment Inquiries**

- (1) Employers and licensing agencies may ask whether the job applicant has been convicted of any crime.
 - (a) **Practice Tip:** Remember that *violations are NOT “convictions of crimes.”* (N.Y. Pen. L. § 10.00(3) & (6).)
- (2) Employers may NOT ask about any arrests that did not result in a conviction. (N.Y. Exec. L. § 296(16); CPL § 160.60.)
 - (a) Exceptions:
 - (i) Government licensing agencies regulating guns, firearms, and other deadly weapons;
 - (ii) Applications for police officer or peace officer as defined in CPL § 1.20(33) & (34).
 - (b) **Practice Tip:** A job application in New York State that asks about arrests is illegal, and under CPL §§ 160.50 & 160.60 client can legally answer “no” about any arrest that lead to a “favorable termination” as defined in CPL § 160.50.

vii) **Enforcement**

- (1) The HRL permits a private right of action for someone denied employment because of an arrest that led to a favorable termination (dismissal, acquittal, etc.). Exec. L. §§ 296(16); 297.

- (2) However, Corrections Law Art. 23A, which protects those who have criminal convictions, is much more limited. If the employer is a public employer, then an applicant can challenge the action only in an Article 78 proceeding. If the employer is a private employer, then the only recourse is to file a complaint with the State Division of Human Rights or City Commission on Human Rights. Corr. L. § 755. The New York City Human Rights Law provides similar enforcement options. NYC Admin Code §§ 8-107(10) & (11); 8-502(d).

b. Alcohol or Drug Dependence

- i) **Federal law** – Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.*, and the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 *et seq.*
 - (1) Prohibit discrimination by public or private employers (with 15 or more employees) against persons with a past or current disability (or those who are perceived to have a disability) who are otherwise qualified to perform the job they seek or hold. Also require reasonable accommodation to this disability.
 - (2) ****Do NOT protect those who “currently engage in the illegal use of drugs.”**
 - (a) However, those in treatment, including methadone treatment, are covered.
- ii) **State law** – NYS Human Rights Law, Exec. L. §§ 290 *et seq.*
 - (1) Reaches more employers (four or more employees) and protects a broader range of people than federal laws.
 - (2) Definition of disability is broader.
 - (3) NYS Division of Human Rights has recognized alcoholism, a history of drug abuse, and participation in a methadone maintenance program as disabilities.
 - (4) ****Protects those currently using illegal drugs IF they can safely perform their job duties.**
- iii) NYC Human Rights Law, NYC Admin. Code §§ 8-102 & 8-107: similar to federal protections.

c. Actual Employment Practices

- i) Despite the protections afforded by the law, there is a demonstrated preference for hiring people without a record.
- ii) In a research study conducted by Professor Devah Pager, the focus was on the effect of a criminal record on employment opportunities and the comparison of that effect between African-Americans and whites.²⁹ The study made the following findings:
 - (1) 34% of whites without criminal records received callbacks, relative to only 17% of whites with criminal records. This demonstrated that a criminal record reduced the likelihood of a callback by 50%.
 - (2) Among African-Americans without criminal records, only 14% received callbacks, relative to 34% of white non-criminals (which was also less than whites **with** criminal records – 17%) and only 5% of African-Americans with criminal records received callbacks.

HOUSING

1. Background

- a. Access to housing is central to the stability of individuals and their communities.
 - i) But for people with criminal records – and their families – even basic shelter is hard to find.
 - ii) Incarceration almost invariably leads to loss of stable housing.
 - (1) Then, when a person returns from prison or jail, she usually finds herself homeless, relying on local shelter systems or the generosity of family members or friends.

²⁹ Devah Pager, *The Mark of a Criminal Record*, 108 *American Journal of Sociology* 5, 937-75 (March 2003).

- (2) In New York City, over thirty percent of single adults in the shelter system were recently released from local jails (substantially more if prisons are included), and many cycle between shelters and incarceration.
- iii) Research indicates that homelessness is also directly linked to re-incarceration of people who have served jail or prison sentences.
 - (1) For instance, homeless individuals on parole have been shown to be seven times more likely to abscond after the first month of release than those located in more permanent housing.
- b. There are legal bars on subsidized housing and consequences in private housing.
- c. As with other areas, these sanctions are not limited to convictions, and not limited to felony convictions.
- d. They illustrate that the fallout of criminal proceedings occurs in the civil or administrative realm, without the basic constitutional protections afforded at criminal trials, and with much different burdens of proof and evidentiary standards.
- e. They create tremendous barriers to family reunification upon reentry from jail or prison.
- 2. **“Bawdy House” Evictions (Narcotics Eviction Proceedings/Illegal Use of Residence)**
 - a. By operation of 3 statutes: RPL § 231(1), RPAPL § 711(5), RPAPL § 715
 - i) RPL § 231 voids the lease; RPAPL § 711(5) gives Landlord cause of action to evict; RPAPL § 715(1) authorizes other parties to evict and establishes presumptions.
 - b. Landlord, usually with assistance and insistence of the District Attorney (in New York City, each borough has a special Narcotics Eviction Unit), must prove that tenant used the premises “as a bawdy-house, or house or place of assignation for lewd purposes, or for purposes of prostitution, or for any illegal trade or manufacture, or other illegal business.” RPAPL § 711(5).
 - i) **Elements:** (a) illegal conduct, (b) engaged in a business, (c) on more than one occasion, (d) involving the premises to be recovered, (e) with the participation, knowledge, or passive acquiescence of one or more of the tenants of record.
 - ii) **No Stay Available:** Generally, the tenant cannot stay the eviction proceeding pending the outcome of the criminal case.
 - iii) **Fifth Amendment Bind:** In Housing Court, your client will be faced with a choice between waiving his 5th Amendment rights and testifying, or invoking his rights and suffering an adverse inference (permitted in civil cases).
 - iv) **Warning:** You must know every time your client appears in Housing Court for a Drug Eviction proceeding! The proceeding inherently explores the underlying facts of the criminal case, it is on the record, and an Assistant District Attorney will be in Housing Court to follow the case.
 - c. **Drugs:** Generally, eviction begun whenever a search warrant is executed in the apartment.
 - i) **Practice Tip:** If the criminal case arose from a search warrant for drugs, tell your client to be prepared to defend against an eviction proceeding.
 - d. **Prostitution** (RPAPL § 715(2)): Two or more convictions of any occupant within the period of a year for P.L. §§ 230 (prostitution, m/d); 230.05 (patronizing a prostitute 2, F); 230.20 (promoting prostitution 4, m/d); 230.25 (promoting prostitution 3, F); 230.30 (promoting prostitution 2, F); 230.40 (permitting prostitution, m/d), arising out of conduct engaged in at the subject property, shall be **presumptive evidence** of conduct constituting use of the premises for purposes of prostitution.
 - e. **Gambling offenses** (RPAPL § 715(3)): Two or more convictions of any occupant within the period of a year for P.L. §§ 225.00 (definitions); 225.05 (promoting gambling 2, m/d); 225.10 (promoting gambling 1, F); 225.15 (poss. of gambling records 2, m/d); 225.20 (poss. of gambling records 1, F); 225.30 (poss. of gambling device, m/d); 225.32 (poss. of gambling device, defenses); 225.35 (gambling offenses, presumptions); 225.40 (lottery offenses, no defense), arising out of conduct engaged in at the subject property, shall be **presumptive evidence** of unlawful use of the premises and of the owner’s knowledge of the same.

- f. **Practice Tip 1:** ASK your clients to inform you immediately if they are served with eviction papers – otherwise, they may **testify on the record** in Housing Court about the underlying facts of the criminal case without your knowledge.
- g. **Practice Tip 2:** The District Attorneys in the five boroughs of New York City have in the past released sealed records from criminal cases to support these evictions. Increasingly, they also obtain *ex parte* unsealing orders. **Significant caselaw indicates that such unsealings are improper.** See, e.g., *Katherine B. v. Cataldo*, 5 N.Y.3d 196 (2005); *People v. Manauri R.*, NYLJ 21, col. 1 (Sup. Ct. Bronx Co. Oct. 22, 2004); *People v. Canales*, 174 Misc. 2d 387 (Sup. Ct. Bronx 1997).
 - i) For extensive resources on dealing with this issue, consult Reentry Net/NY at www.reentry.net/ny.

3. Private Landlords

- a. Many criminal offenses can also spark an eviction under the “nuisance” theory or as a violation of a “substantial obligation” of the lease.
- b. **Definition of Nuisance**
 - i) Generally, the offensive conduct must be ongoing and continuous.
 - ii) The tenant is using or permitting the apartment to be used for an immoral or illegal purpose.
 - iii) The tenant is committing or permitting a nuisance, or is maliciously or by reason of gross negligence substantially damaging the housing accommodation; or his conduct is such as to interfere substantially with the comfort and safety of the landlord or of other tenants or occupants of the same or another adjacent building or structure.
 - iv) Landlord must prove that tenant’s conduct “interfered with the use or enjoyment” of the property.

4. Effect of Incarceration – Nonprimary Residence Holdovers (Rent Control/Stabilization Law)

- a. Incarceration may lead to nonprimary residence holdover if tenant is out of a Rent Stabilized or Rent Controlled apartment over 180 days.
- b. Civil commitment for mental health issues is an excusable absence, *Katz v. Gelman*, 177 Misc.2d 83 (App. Term, 1st Dept. 1998), and the same theory might be extended to incarceration.

5. Housing Discrimination – Rights & Protections

- a. **Disability & Race** (Federal and State Fair Housing Acts)
 - i) The powerful fair housing provisions that protect people with disabilities against discrimination and require reasonable accommodation also protect recovered substance abusers as persons with disabilities. See Exec. L. §§ 290 *et seq.*; 42 U.S.C. 3604(f).
 - ii) In addition, a landlord’s policy or practice of excluding persons with conviction records has a disparate impact on African-Americans and Latinos. See *id.*; Civ. Rights L. §§ 18-a to 19-b.
- b. **Federal and State Fair Credit Reporting Acts (FCRA)** (Employment & Housing)
 - i) Most private employers and landlords receive criminal history information from a variety of consumer reporting agencies (CRAs), rather than official sources. A number of national studies have shown that reports from these CRAs are notoriously incorrect or incomplete. FCRA establishes standards of accuracy and procedural rights if a report is the basis for adverse decisions. See 15 U.S.C. § 1681 *et seq.*
 - ii) NY FCRA prohibits reporting non-criminal convictions, such as violations. See Gen. Bus. L. § 380 *et seq.*
 - iii) These protections can be used to promote fairness in both employment and housing decisions.

FEDERALLY-SUBSIDIZED HOUSING

(Public, Federally-Assisted, or Section 8 Housing)

Provisions Applicable to All Federally-Subsidized Housing

1. Public Housing Authorities (PHA's) administer most of the federally subsidized housing programs in NY, including public housing and most of the Section 8 voucher program. In New York City, the PHA is the New York City Housing Authority (NYCHA).
2. Each PHA must *publish standards* for denying eligibility and terminating assistance based on criminal activity and substance abuse.
 - a. PHA's can institute policies that are *more restrictive* than the federal law and regulations described below.
 - b. *Admission to Programs*: PHA's have the authority to bar eligibility for a reasonable period of time after any criminal activity. (42 USC § 13661(c).)
 - i) Upon application, PHA will fingerprint all members of the household (except those under 16) and run a criminal background check.
 - ii) Generally, for each conviction, there is a specific time period of ineligibility after the person's sentence, probation, and payment of fine.
 - c. *Termination from Programs*: PHA's and Landlords generally have the authority to terminate or evict residents for any new criminal activity.
 - d. PHA's and Landlords can require the *exclusion* of an offending household member as a condition of admission or continued benefits.
3. **Definitions** (24 CFR § 5.100)
 - a. *Drug-related Criminal Activity*: the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug.
 - b. *Drug*: a controlled substance as defined in section 102 of the Controlled Substances Act, 21 USC § 802.
 - c. *Violent Criminal Activity*: any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.
 - d. *Guest*: a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.
 - e. *Person Under the Tenant's Control*: a person, although not staying as a guest, on the premises at the time of the activity in question because of an invitation from the tenant or other household member with express or implied authority to consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not under the tenant's control.

Conventional Public Housing

1. **Admission to Programs** (24 CFR §§ 960.203 & 960.204)
 - a. **Mandatory Denial**: The following categories of applicants **WILL** be found ineligible:
 - i) *Persons Subject to Lifetime Sex Offender Registration* (42 U.S.C. § 13663(a)): Any household with a member who is subject to a lifetime registration requirement under a state sex offender registration program is ineligible for public, federally assisted, or Section 8 housing.
 - ii) *Persons Convicted of Methamphetamine Production* (42 USC § 1437n(f)): Permanent bar for any individual who has ever been convicted of drug-related criminal activity for manufacture or production on methamphetamine on the premises of federally-assisted housing.
 - b. **Presumptive Denial**: The following categories of applicants **WILL** be found ineligible unless the relevant mitigation provisions are satisfied:
 - i) *Persons Evicted in Past for Drug-Related Activity*: If a household member has been **evicted** from any public, federally-assisted, or Section 8 housing for drug-related criminal activity within the immediate past 3 years, PHA must deny admission **UNLESS** the applicant submits evidence to the PHA's satisfaction:

- (1) That the affected household member has successfully completed a supervised rehabilitation program approved by the PHA; OR
 - (2) That the circumstances leading to the eviction no longer exist.
 - ii) *Persons Engaging in Illegal Use of a Drug* (42 USC § 13661): PHA will deny admission if:
 - (1) Any family member is *currently engaging in illegal use* of a controlled substance; or
 - (2) There's reasonable cause to believe that a family member's illegal use or *pattern of illegal use* of a controlled substance *may interfere with* the health, safety, or right to peaceful enjoyment of the premises by other residents.
 - (3) *Mitigation Provision*: BUT, in determining whether the applicant MUST be found ineligible based on any of the above grounds, the PHA *MAY* consider evidence submitted by the applicant that the affected family member is no longer engaging in the activity and:
 - (a) participates in, or has successfully completed, a supervised rehabilitation program; *or*
 - (b) has otherwise been rehabilitated successfully.
 - iii) *Persons Abusing Alcohol* (42 USC § 13661)
 - (1) PHA will deny admission if there is reasonable cause to believe that a family member's abuse or pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.
 - (2) *Mitigation Provision*: BUT, in determining whether the applicant MUST be found ineligible based on any of the above grounds, the PHA *MAY* consider evidence submitted by the applicant that the affected family member is no longer engaging in the activity and:
 - (a) participates in, or has successfully completed, a supervised rehabilitation program; *or*
 - (b) has otherwise been rehabilitated successfully.
- c. **Discretionary Denial**
 - i) *Persons Who Engaged in Past Criminal Activity* (42 USC § 13661)
 - (1) For a reasonable amount of time after the criminal activity, the PHA may deny admission if any member of the household engaged in:
 - (a) Any drug-related criminal activity; or
 - (b) Any violent criminal activity; or
 - (c) Any other criminal activity that would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or PHA employees.
 - ii) (NOTE: Fleeing Felons and Parole Violators are not mentioned in the statutes or regulations concerning Public Housing eligibility, but they are subject to termination. See below.)
- d. **General Mitigation Provision** (24 CFR § 960.203): When the PHA receives any unfavorable information about an applicant:
 - i) Consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense);
 - ii) Consideration may be given to factors that might indicate a reasonable probability of "favorable future conduct," such as:
 - (1) Evidence of rehabilitation, and
 - (2) Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs.
 - iii) However, if rehabilitation is not an element of the eligibility determination (see above), the PHA may choose not to consider whether the person has been rehabilitated.
 - iv) *Exclusion of Family Member*: The PHA may require an applicant to exclude a household member who has participated in or been culpable for criminal, alcohol, or drug-related activity (those in 24 CFR § 960.204) that warrant denial.

- v) *Continuation of Denial*. The PHA may choose to continue the prohibition of admission past the prescribed period of time for a disqualifying behavior or event. (24 CFR § 960.203(c)(3).)
 - e. **Practice Tip:** CRDs and CGCs [*see above re Certificates to Demonstrate Rehabilitation*] can be critical mitigation evidence that permits tenants with criminal convictions to obtain stable public housing.
- 2. Termination or Eviction** (42 USC § 1437d(l); 24 CFR § 966.4)
- a. **Mandatory Termination:** The following categories of current public housing residents WILL have their subsidies terminated and be evicted from public housing:
 - i) *Persons Subject to Lifetime Sex Offender Registration:* [see above];
 - ii) *Persons Convicted of Methamphetamine Production:* [see above];
 - b. **Discretionary Termination:** The following categories of residents MAY be terminated:
 - i) *Persons Engaging in Illegal Use of a Drug:* [see above, including specific mitigation provision];
 - ii) *Persons Abusing Alcohol:* [see above, including specific mitigation provision];
 - iii) *Persons Furnishing False Information:* Any person who furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers;
 - iv) *Persons Engaging in Criminal Activity*
 - (1) *Drug Crime On or Off the Premises:* if any tenant, member of the tenant’s household, or guest engages in any drug-related criminal activity **on or off** the premises, or any other person under the tenant’s control engages in any drug-related criminal activity **on** the premises;
 - (a) **Warning:** PHA’s have the authority to evict for drug-related activity even if the tenant did not know, could not foresee, or could not control behavior by other occupants or guests. *Dep’t of Housing & Urban Dev. v. Rucker*, 535 U.S. 125 (2002).
 - (2) *Crimes Entailing Threat to Other Residents:* if a public housing tenant, any member of the tenant's household, or guest, or any other person under the tenant's control engages in any criminal activity threatening the health, safety, or right to peaceful enjoyment of the premises by *other tenants*, or by *persons residing in the immediate vicinity* of the premises;
 - (3) **Evidence:** Neither an arrest nor a conviction is necessary, and the standard of proof required for a criminal conviction need not be satisfied. However, the PHA must provide some evidence that the criminal activity has occurred.
 - v) *Fleeing Felons:* if the tenant is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime (or attempt to commit a crime) that is a felony under the laws of the place from which the individual flees (or a high misdemeanor in NJ);
 - vi) *Parole Violators:* if the tenant is violating a condition of probation or parole imposed under Federal or State law.
 - vii) **General Mitigation Provision:** for all discretionary terminations, the PHA may consider all relevant circumstances such as:
 - (1) The seriousness of the offending action;
 - (2) The extent of participation by the leaseholder in the offending action;
 - (3) The effects that the eviction would have on family members not involved in the offending activity; and
 - (4) The extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.
 - viii) *Exclusion of Family Member.* The PHA has *discretion* to evict only the wrong-doer, but PHA’s can and frequently do evict entire families.

- ix) **Practice Tip:** CRDs and CGCs [*see above re Certificates to Demonstrate Rehabilitation*] can be critical mitigation evidence that can prevent the loss of public housing due to criminal convictions.
- 3. Grievance Procedure** (24 CFR § 966.50-57)
- a. **Notice.** Written notice of lease termination is required within a reasonable period of time, not to exceed 30 days, informing tenant of the grounds for termination, the right to reply to the notice and examine any documents directly relevant to the lease termination, and whether and when the tenant is entitled to request a grievance hearing. (24 CFR § 966.4(1)(3).)
 - b. **Grievance Process.**
 - i) *Informal Settlement.* First step is to attempt to settle the matter at an informal conference, usually scheduled within ten working days of filing a grievance.
 - ii) *Formal Hearing.* Within five days of receiving the results of the informal hearing, complainant must file a written request for a formal grievance hearing. Within a reasonable time after the formal hearing, usually ten working days, the hearing panel/officer must issue a decision.
 - c. **Grievance Hearing Not Required.** If the PHA is terminating the lease by judicial action (*e.g.*, in Housing Court) and HUD has determined that the state’s eviction procedure meets HUD’s requirements for due process (“due process determination”), the terminations for the following reasons are NOT subject to the administrative grievance procedure:
 - i) Any criminal activity entailing a threat to other residents [*see above*];
 - ii) Any violent or drug-related criminal activity [*see above*]; or
 - iii) Any criminal activity that resulted in a felony conviction of a household member.
4. **References:** The extensive HUD *Public Housing Occupancy Guidebook* is available online at www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf.

Public Housing in New York City
New York City Housing Authority (NYCHA)

1. Admission

- a. Bases for Ineligibility:
 - i) Persons with a Criminal Record
 - (1) For public housing, NYCHA has set ineligibility periods for families containing persons within the categories below: (*Applications Manual, Ex. F, “Standards for Admission: Conviction Factors and End of Ineligibility Periods – Public Housing Program”*)

NYCHA Public Housing	
Criminal Conviction	Years After Serving Sentence (including completion of probation/parole and payment of fine)
Subject to a lifetime registration requirement under a state sex offender registration program	Until the convicted person is no longer subject to a lifetime registration requirement
<i>Felonies</i> Class A, B, and C Class D and E	6 years 5 years
<i>Misdemeanors</i> Class A Class B or unclassified	4 years (5 years if 3+ convictions for Class A m/d or felonies within last 10 years) 3 years (4 years if 3+ convictions for m/d or felonies within last 10 years)
<i>Violations or Infractions</i> Violations or DWI	2 years (3 years if 3+ convictions for felonies, m/d, violations or DWI infractions within last 10 years)
<i>Multiple Convictions</i>	Ineligible for longest applicable period.

- (2) *Pending Charges*: NYCHA will deny or hold an application if any criminal charges are pending, including an ACD before actual dismissal.
- (a) **Practice Tip**: Judges and prosecutors have agreed to shorten adjournment periods in this situation.
- (3) *Excluded Crimes*: NYCHA does have a short list of offenses that it officially disregards as a basis of ineligibility, including some felonies, misdemeanors, and violations. Applicant must present a copy of the original charges to prove that one of these offenses was the *only basis*. (*Applications Manual, Ex. H, "Overlooked Offenses – Public Housing Program."*)
- (a) *Felonies*
- (i) Unlawful use of secret scientific material;
 - (ii) Trademark counterfeiting in 1st and 2nd degree;
 - (iii) Manufacture of unauthorized recordings in 1st degree;
 - (iv) Manufacture or Sale of an unauthorized recording or performance in 1st degree;
 - (v) Advertisement or sale of unauthorized recordings in 1st degree;
 - (vi) Failure to disclose origin of recording in 1st degree.
- (b) *Misdemeanors*
- (i) Subway fare evasion (first or second offense in last 10 years);
 - (ii) Self-abortion in 1st and 2nd degree;
 - (iii) Consensual sodomy;
 - (iv) Fortune telling;
 - (v) Trademark counterfeiting in 3rd degree;
 - (vi) Manufacture of unauthorized recordings in 2nd degree;
 - (vii) Manufacture or sale of an unauthorized recording or performance in 2nd degree;

- (viii) Advertisement or sale of unauthorized recordings in 2nd degree;
 - (ix) Failure to disclose origin of recording in 2nd degree;
 - (c) *Violations*
 - (i) Hazing in 2nd degree;
 - (ii) Unlawfully posting advertisements;
 - (iii) Littering on railroad tracks and rights-of-way;
 - (iv) First offense for theft of cable television service, for avoiding payment for admission to a theater or a concert hall or a ski lift;
 - (v) Misconduct by a juror in 2nd degree;
 - (vi) Offensive exhibition;
 - (vii) Unauthorized operation of a recording device in a motion picture theater;
 - (viii) **NOTE:** Disorderly Conduct (PL § 240.20) and Harassment (PL § 240.26) are NOT on this exclusion list.
 - (4) McNair Hearing (challenging ineligibility for criminal offenses) (*Applications Manual, Chap IX, Sec. V, Subsec. B (2).*)
 - (a) A grievant found “ineligible due to convictions” has the right to produce evidence of her rehabilitation to overcome any denial of eligibility. *See Faison v. New York City Housing Authority*, 283 A.D.2d 353, 354 (1st Dep’t 2001).
 - (b) Applicant family must show that the only basis for ineligibility is an offense that NYCHA has chosen to overlook, OR present substantial evidence to indicate a reasonable probability that offending person’s future behavior will not adversely affect the physical or financial health, safety, or welfare of other tenants, Authority staff, or an Authority project.
 - (c) **Practice Tip:** CRDs and CGCs [*see above re Certificates to Demonstrate Rehabilitation*] can be critical mitigation evidence in McNair hearings.
 - (d) See *Guidelines for AIO Staff When Considering Applicants Found Ineligible Due to Convictions* for factors and proof that categorically meet this standard.
 - ii) Persons who have started fires within the last four years (through arson; smoking in bed; abandoned, discarded, or improperly placed material; children over six playing with a heat source; heat source unattended or combustible material placed too close to a heat source; or use of flammable liquid to start a fire);
 - iii) Persons who within the last 3 years have behaved violently or have destroyed property;
 - iv) Persons who within the last 3 years have disturbed neighbors;
 - v) Persons with grossly unsanitary or hazardous housekeeping habits;
 - vi) Persons who within the last 3 years have illegally *used* a controlled substance, UNLESS
 - (1) The family provides:
 - (a) written verification from a state-licensed drug treatment agency that the offending person has been drug-free for 12 months; and
 - (b) a current clean toxicology report; or
 - (2) The family provides substantial evidence that the offending person:
 - (a) is no longer engaging in the illegal use of a controlled substance, and
 - (b) has otherwise been rehabilitated successfully;
 - (3) (*See “New Drug Policy” effective June 15, 2000. At eligibility interview, the applicant is asked if any family member has used illegal drugs in the past three years.*)
 - vii) Persons permanently excluded from a NYCHA apartment within the last 5 years;
 - viii) Persons terminated from NYCHA employment within the last three years after a trial for behavior that would constitute a felony, m/d, violation, or intoxication on the job.
 - ix) (*See NYCHA Applications Manual, Ex I, “Standards for Admission: Non-Penal Factors & End of Ineligibility Periods (EIP) – Public Housing Program”*)
- b. **General Mitigation Provision**
- i) Evidence of rehabilitation;

- ii) Evidence of family’s participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs.
- c. (See generally NYCHA Applications Manual, Chap V, Sec. II, Subsec. F, “Standards for Admission.”)

2. Termination for “Non-desirability”

- a. NYCHA tenants can have their subsidies terminated (in an administrative hearing, which leads to an eviction in Housing Court) for their conduct or the actions of any person occupying the premises of the tenant which constitutes:
 - i) A danger to the health and safety of neighbors;
 - ii) A sex or morals offense on or near the NYCHA premises;
 - iii) A source of danger or a cause of damage to NYCHA employees or property;
 - iv) A danger to the peaceful occupation of other tenants;
 - v) A common law nuisance.
- b. *Grievance Procedure.* NYCHA continues to be bound by various consent decrees (especially the *Escalera* decree) that are more protective of tenants than current federal law. (See “New York City Housing Authority Grievance Procedures” under NYCHA Useful Materials on *probono.net*.)
 - i) Probably the most important provisions relevant to criminal conduct are in the *Randolph/Tyson* consent decrees, which state that a tenant cannot be evicted if the accused person (or “non-desirable”) has been removed from the household by the time of the administrative hearing.
 - ii) In those cases, the tenant can only be placed on probation and the non-desirable can be permanently excluded from living there.
 - iii) These cases involve the classic “innocent family member” scenario – where a parent or grandparent is the tenant being evicted for the alleged conduct of a child or grandchild.
 - iv) Procedure
 - (1) NYCHA will provide notice of administrative termination proceedings at least 15 days before the hearing is to be held. The hearing generally can be postponed until after a criminal disposition. A favorable termination in the criminal proceeding (dismissal, ACD, acquittal) usually causes NYCHA to withdraw the termination proceeding.
 - (2) But beware, ANY conviction (even for a violation) can be used as a basis for termination because it can be a basis for ineligibility (see above).
 - (3) After the hearing, the Hearing Officer will provide a written decision and make a disposition with respect to each of the charges.
 - v) **Practice Tip:** CRDs and CGCs [see above re *Certificates to Demonstrate Rehabilitation*] can be critical mitigation evidence in termination hearings.
- c. (See generally NYCHA Management Manual – Chapter VII, Sec. III & IV, “Termination of Tenancy,” and Appendix B – “Termination of Tenancy – Non-Desirability Actions”)

3. Termination for other Prohibited Conduct

- a. *Misrepresentation:* if the tenant makes a willful misstatement or conceals any material fact relating to eligibility for admission or continued occupancy;
- b. *Breach of Rules and Regulations:* if the tenant or any person occupying the tenant’s premises violates a NYCHA rule or regulation;
- c. *Chronic Breach of Rules and Regulations:* if the tenant or any person occupying the tenant’s premises repeatedly violates a NYCHA rule or regulation;
- d. *Chronic Delinquency on the Payment of Rent:* if the tenant repeatedly fails or refuses to pay rent within the month due at least 3 times within a 12 month period;
- e. *Non-verifiable Income:* if the tenant fails or refuses to submit to a verification of family income;
- f. *Assignment or Transfer of Possession:* if the tenant of record moves from the apartment and the apartment is being occupied by a person without NYCHA permission;
- g. *Squatter/Licensee Occupancy:* if the tenant has moved and admits to having moved and the apartment is being occupied by a person without any legal claim or right to it;

- h. *Loss of Resident Employee Status*: if an employee loses resident status, unless such employee is eligible to become a tenant;
- i. *Non-Payment of Rent*: if the tenant fails to pay rent on the date fixed for payment.
- j. (See NYCHA Management Manual – Chapter VII, Sec. III & IV, “Termination of Tenancy”)

Section 8 Program

1. Generally

- a. The Section 8 Housing Choice Voucher Program subsidizes tenants to rent apartments from private landlords.
- b. The local PHA usually administers each Section 8 program.
- c. The crime-related eligibility and termination standards generally parallel those of Conventional Public Housing.

2. Admission to Program (42 USC § 1437f; 24 CFR §§ 982.552 & 982.553)

- a. **Mandatory Denial**: The following categories of applicants **WILL** be found ineligible:
 - i) *Persons Subject to Lifetime Sex Offender Registration*: [same as for public housing]
 - ii) *Persons Convicted of Methamphetamine Production*: [same as for public housing]
- b. **Discretionary Denial**: The PHA has the **discretion** to deny the following (subject to the listed mitigation provisions):
 - i) *Persons Evicted in Past for Drug-Related Activity*: [same as for public housing, including specific mitigation provision];
 - ii) *Persons Engaging in Illegal Use of a Drug*: [same as for public housing, including specific mitigation provision];
 - iii) *Persons Abusing Alcohol*: [same as for public housing, including specific mitigation provision];
 - iv) *Persons Who Engaged in Past Criminal Activity*: if any household member is currently engaged in, or has engaged in during a reasonable time before the admission:
 - (1) Drug-related criminal activity;
 - (2) Violent criminal activity;
 - (3) Other criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity;
 - (4) Other criminal activity that may threaten the health or safety of the owner, property management staff, or persons acting on behalf of the PHA.
 - (5) NOTE: If the PHA previously denied an application due to criminal activity, it may reconsider the applicant if the PHA has sufficient evidence that the members of the household have not engaged in such criminal activity during a reasonable period.
 - v) *Persons Who Committed Fraud*: If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program;
 - vi) *Persons Who Threaten PHA personnel*: If the family has engaged in or threatened abusive or violent behavior toward PHA personnel;
 - vii) *Persons Who Have Been Evicted or Terminated*: If any member of the family has been evicted from federally assisted housing in the last five years, or if a PHA has ever terminated assistance under the program for any member of the family.
 - viii) (NOTE: Fleeing Felons and Parole Violators are not mentioned in the statutes or regulations concerning Section 8 eligibility, including 42 USC § 1437f and 24 CFR Part 982.)
 - ix) **General Mitigation Provision**: (24 CFR § 982.552(c)(2))
 - (1) For all discretionary denials, the PHA may consider all relevant circumstances such as:
 - (a) The seriousness of the case;
 - (b) The extent of participation or culpability of individual family members;
 - (c) Mitigating circumstances related to the disability of a family member; and

- (d) The effects of denial or termination of assistance on other family members who were not involved in the action or failure.
 - (2) *Disability*: If the family includes a person with disabilities, the PHA decision is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.
 - (3) *Exclusion of Family Member*: the PHA may require the exclusion of the culpable family member from the household.
 - x) **Practice Tip**: CRDs and CGCs [*see above re Certificates to Demonstrate Rehabilitation*] can be critical mitigation evidence that permits tenants with criminal convictions to obtain Section 8 vouchers.
- 3. **Termination or Eviction** (42 USC §§ 1437f(d) & 1437f(o)(7)(D))
 - a. **Termination by PHA** (24 CFR §§ 982.551, 982.552, 982.553)
 - i) **Mandatory Termination**: The following categories of Section 8 recipients WILL have their subsidies terminated and be evicted:
 - (1) *Persons Subject to Lifetime Sex Offender Registration*: [same as for public housing];
 - (2) *Persons Convicted of Methamphetamine Production*: [same as for public housing];
 - ii) **Discretionary Termination**: The following categories of residents MAY be terminated:
 - (1) *Persons Engaging in Illegal Use of a Drug*: [same as for public housing, including specific mitigation provision];
 - (2) *Persons Abusing Alcohol*: [same as for public housing, including specific mitigation provision];
 - (3) *Persons Engaging in Criminal Activity*: if any household member has violated his lease obligation not to engage in any:
 - (a) Drug-related criminal activity;
 - (b) Violent criminal activity;
 - (c) **Evidence**: Neither an arrest nor a conviction is necessary [same as for public housing]. (24 C.F.R. § 982.553(c).)
 - (i) NOTE: the criteria for PHA terminations do not include criminal activity that threatens the health or safety of other tenants or PHA workers.
 - (4) *Persons Who Committed Fraud*: [same as for Section 8 Admission];
 - (5) *Persons Who Threaten PHA personnel*: [same as for Section 8 Admission]
 - (6) (NOTE: Fleeing Felons and Parole Violators are not mentioned in the statutes or regulations concerning Section 8 termination by the PHA, including 42 USC § 1437f and 24 CFR Part 982. BUT, the HUD Guidebook states that PHA's may terminate on those grounds.)
 - (7) **General Mitigation Provision**: [same as for Section 8 Admission.]
 - (8) **Practice Tip**: CRDs and CGCs [*see above re Certificates to Demonstrate Rehabilitation*] can be critical mitigation evidence that can prevent the loss of Section 8 vouchers due to criminal convictions.
 - iii) **Grievance Procedure**. PHA must provide prompt written notice of termination and right to request an informal hearing. The family must be given the opportunity to examine any directly-relevant documents prior to the PHA hearing. (24 CFR § 982.555.)
 - b. **Termination or Eviction by Owner/Landlord** (24 CFR § 982.310)
 - i) The owner or landlord may terminate the tenancy by evicting the household in Housing Court because the relevant tenant obligations of good conduct, incorporated as lease provisions, have been violated.
 - ii) **Discretionary Termination**: The owner/landlord may evict or require the exclusion of the following categories of residents:
 - (1) *Persons Engaging in Illegal Use of a Drug*: [same as for public housing, including specific mitigation provision];
 - (2) *Persons Abusing Alcohol*: [same as for public housing, including specific mitigation provision]

- (a) NOTE: this ground is not listed in 982.310, but it is still a lease requirement, the violation of which is grounds for eviction;
- (3) *Persons Engaging in Criminal Activity*
 - (a) *Drug Crime On or Near the Premises*: if any tenant, member of the tenant’s household, or guest engages in any drug-related criminal activity **on or near the premises**, or any person under the tenant’s control engages in any drug-related criminal activity **on the premises**;
 - (i) NOTE that this provision is more limited than the PHA’s authority.
 - (b) *Violent Criminal Activity*: if any tenant, member of the tenant’s household, or guest engages in any violent criminal activity **on or near the premises**, or any other person under the tenant’s control engages in such activity **on the premises**;
 - (i) NOTE that this provision is more limited than the PHA’s authority.
 - (c) Other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;
 - (d) Other criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity;
 - (e) **Evidence**: Neither an arrest nor a conviction is necessary [see above].
- (4) *Fleeing Felons*: [same as for public housing];
- (5) *Parole Violators*: [same as for public housing];
- (6) The owner/landlord may also evict for *serious or repeated violation of the terms and conditions of the lease*, including all tenant obligations in 24 CFR § 982.551. The owner/landlord can also evict for “other good cause,” including failure to accept a new lease, a history of disturbance or destruction of property, owner’s desire to use the unit for personal use, sale, renovation, or to lease at a higher rent, or other economic reason.
- (7) *Exclusion of Family Member*. The owner may require a tenant to exclude a culpable household member as a condition of continued tenancy.
- iii) **General Mitigation Provision**: for all of these grounds, when action is not required by law, the owner/landlord may consider all relevant circumstances such as:
 - (1) The seriousness of the offending action;
 - (2) The effect on the community of denial or termination or the failure of the owner to take such action;
 - (3) The extent of participation by the leaseholder in the offending action;
 - (4) The effects that the eviction would have on family members not involved in the offending activity;
 - (5) The demand for assisted housing by families who will adhere to lease responsibilities;
 - (6) The extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action; and
 - (7) The effect of the owner’s action on the integrity of the program.
- c. **Absence from Unit** (24 C.F.R. § 982.312)
 - i) *Absence from unit*: the family may not be absent from the unit for a period of more than 180 consecutive calendar days. (24 CFR § 982.312(a).)
 - ii) *Absence* means that no member of the family is residing in the unit. (§ 982.312(c).)
 - iii) **Practice Tip**: Be careful of this provision when a client is incarcerated or entering a residential treatment program.
- d. **Changes in Household Composition** (24 CFR § 982.551)
 - i) A participant must keep the Section 8 PHA informed of any changes in household composition. Tenants have been terminated for failure to notify Section 8, particularly for additions to the household.
 - ii) Tenants who do not notify Section 8 of additions can also be prosecuted criminally for fraud.

Section 8 in New York City
NYCHA Section 8

1. Generally

- a. The vast majority of Section 8 vouchers in New York City are administered by NYCHA. The City Department of Housing Preservation and Development (HPD) also administers a significant number for families in limited situations.

2. Admission to Program

- a. Note that NYCHA has chosen to overlook a broader range of offenses under Section 8 housing than under Public Housing and has set specific ineligibility periods only for sex offenders subject to a lifetime registration requirement, violent felonies, and controlled substances or alcohol-related offenses. (See *NYCHA Applications Manual, Exhibit G “Section 8 Program - NYS Penal Code and Traffic Law Sections with respect to Violent Felonies, Controlled Substances and Alcohol-Related Offenses”*; Ex. FF, “Standards for Admission: Conviction Factors & End of Ineligibility Periods – Section 8 Housing Assistance Program,” and Ex. HH, “Overlooked Offenses – Section 8 Housing Assistance Program,” *NYCHA Applications Manual, Chap VI, Sec. II, Subsec. E (3).*)

<i>NYCHA Section 8</i>	
Criminal Conviction	Years After Serving Sentence (including completion of probation/parole and payment of fine)
Subject to a lifetime registration requirement under a state sex offender registration program	Until the convicted person is no longer subject to a lifetime registration requirement
<i>Violent Behavior, Controlled Substances or Alcohol Related Offenses</i> Class A, B, and C Class D and E	6 years 5 years
<i>Controlled Substances or Alcohol Related Offenses</i> Class A Misdemeanors Class B or Unclassified Misdemeanors	4 years (5 years if 3+ convictions for Class A m/d or felonies within last 10 years) 3 years (4 years if 3+ convictions for m/d or felonies within last 10 years)
<i>Controlled Substances or Alcohol Related Offenses</i> Violations or DWI	2 years (3 years if 3+ convictions for felonies, m/d, violations or DWI infractions within last 10 years)
<i>Multiple Convictions</i>	Ineligible for longest applicable period.

- b. For a list of specific offenses, see *NYCHA Applications Manual, Exhibit G “Section 8 Program - NYS Penal Code and Traffic Law Sections with respect to Violent Felonies, Controlled Substances and Alcohol-Related Offenses.”*
- c. **McNair hearing** (challenging ineligibility for criminal offenses): Same as for NYCHA public housing. (See *NYCHA Applications Manual, Chap IX, Sec. VIII, Subsec. B(2).*)

- d. **Practice Tip:** CRDs and CGCs [*see above re Certificates to Demonstrate Rehabilitation*] can be critical mitigation evidence that permits tenants with criminal convictions to obtain Section 8 vouchers.

3. Termination or Eviction

- a. These provisions are substantially the same as for the Section 8 program generally, although some special requirements have been instituted by consent decree.

PUBLIC BENEFITS/WELFARE

1. Drug-related Felony Convictions

- a. 21 U.S.C. § 862a **permanently bars** anyone with a drug-related felony conviction from receiving federal cash assistance and Food Stamps during his or her **lifetime**.

- i) **Definitions**

- (1) *Drug-related felony conviction:* any offense that is classified as a felony by the law of the jurisdiction involved and that has as an element the possession, use, or distribution of a controlled substance.

- (2) Only applies to convictions for conduct after August 22, 1996.

- ii) **Benefits Covered by Ban**

- (1) Temporary Assistance for Needy Families (TANF) (benefits provided under 42 U.S.C. § 601 *et seq.*) (traditional “welfare” benefits; before 1996, was called Aid to Families with Dependent Children (AFDC));

- (2) Food Stamps (benefits provided under 7 U.S.C.A. § 2011 *et seq.* or § 2012(h))

- iii) **Benefits Excluded from Ban**

- (1) Emergency medical services under title XIX of the Social Security Act [42 U.S.C. § 1396 *et seq.*];

- (2) Short-term, noncash, in-kind emergency disaster relief;

- (3) The following public health benefits:

- (a) Public health assistance for immunizations;

- (b) Public health assistance for testing and treatment of communicable diseases if the Secretary of Health and Human Services determines that it is necessary to prevent the spread of such disease.

- (4) Prenatal care;

- (5) Job training programs (including Welfare-to-Work funded services such as supportive services, post-employment services, job readiness, or job placement);

- (6) Drug treatment programs;

- (7) Medicaid;

- (8) Federal disability benefits under Social Security Disability (SSD) or Supplemental Security Income (SSI).

- b. **States May Opt Out**

- i) New York has **opted out** of this lifetime ban entirely.

- ii) As of February 2005 (see <http://www.lac.org/lac/main.php?view=law&subaction=5#>):

- (1) 17 states have the full ban in place (including California)

Alabama	Kansas	South Dakota
Alaska	Mississippi	Texas
Arizona	Missouri	Virginia
California	Montana	West Virginia
Delaware	Nebraska	Wyoming
Georgia	North Dakota	
Indiana	Pennsylvania	

- (2) 21 states have modified the ban by allowing benefits dependent upon drug treatment, denying benefits only for sales convictions, or placing a time limit on the ban.

Arkansas	Kentucky	North Carolina
Colorado	Louisiana	Rhode Island
Florida	Maryland	South Carolina
Hawaii	Massachusetts	Tennessee
Idaho	Minnesota	Utah
Illinois	Nevada	Washington
Iowa	New Jersey	Wisconsin

- (3) 11 states and DC have completely opted out of the ban (including NY)

Connecticut	New Mexico	Oregon
Maine	New York	Vermont
Michigan	Ohio	District of Columbia
New Hampshire	Oklahoma	

- c. **Practice Tip:** you should **always** advise your clients of this ban in case they move to another state.

2. Fleeing Felons or Parole Violators Ineligible for Most Benefits

- a. **Ineligibility:** (42 U.S.C. § 608(a)(9)(A)) States may not provide TANF-funded benefits, SSI, SSDI, public and federally-assisted housing, or Food Stamps to individuals who are:
- i) Fleeing felons,³⁰ or
 - ii) Violating a condition of probation or parole, as found by a judicial or administrative determination.
 - iii) For public assistance and Food Stamps, these categories are defined by state law under Soc. Serv. L. § 131(14); 18 NYCRR § 351.2 (public assistance); 18 NYCRR § 387.1 (Food Stamps); and 97 ADM-23.
- b. These persons **remain eligible for Medicaid.**
- i) See also www.empirejustice.org/content.asp?CatId=467&ContentType=Issue_Areas&areaID=232.
- c. Most recently, in *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005), the Court of Appeals for the Second Circuit held that the federal statute does not permit the Commissioner to conclude simply from the fact that there is an outstanding warrant for a person’s arrest that he is “fleeing to avoid prosecution.”³¹ Instead, there must be some evidence that the person knows his apprehension is sought.
- d. For other conviction-related SSD and SSI barriers, see http://www.ssa.gov/OP_Home/handbook/handbook.pdf (2001 Social Security Handbook).
- e. **Warning:** because the Fleeing Felon bar applies to TANF and Food Stamps, the Department of Social Services (Human Resources Administration in New York City) will run a national warrant check on **any** client applying for Public Assistance.

³⁰ “Fleeing Felon” is a specific legal term used to identify individuals “fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed.” 42 U.S.C. § 1382 (e)(4).

³¹ 10 U.S.C. § 1382(e)(4)(A).

- f. **Practice Tip:** for extensive resources on restoring benefits in these situations, consult Reentry Net/NY at www.reentry.net/ny.
 - i) **Warning:** Note that for SSI and SSD, a recipient challenging the termination of benefits can receive aid continuing through the ALJ level appeal. If the recipient loses at the hearing, there is no aid continuing through the Hearing Council and federal court appeals.

3. Fraud/Intentional Program Violations

- a. Clients can face criminal and/or civil liability for fraud or misrepresentation concerning government benefits.
 - i) Administrative sanctions can be imposed through Intentional Program Violation (IPV) hearings.
- b. *Sanctions:* SSL § 145-c (for any finding of IPV in federal, state, or administrative venue).
- c. *Penalties:* 18 NYCRR § 359.9
- d. If client is arrested for drug crimes and money is seized, client may face administrative **welfare fraud** accusations of concealment of income from illegal sources.
 - i) The local welfare agency's investigators will meet with the client and ask him about the underlying facts of the criminal case.
 - ii) **Practice Tip:** Warn your client about this! Instruct client to go to the meeting, but to invoke her right to remain silent if the criminal case is still pending. The Welfare agencies use these meetings aggressively to get "confessions."

4. Incarceration: Eligibility for public benefits may be affected during periods of **incarceration**. Tell your client or their family to watch carefully for notices of termination.

- a. *Public Assistance* (TANF, state cash benefits)
 - i) Generally, the Human Resources Administration considers incarcerated persons ineligible to apply, but there is no statutory basis for this position.
 - ii) *Temporary Absence:* Current recipients are permitted to be temporarily absent for 6 months from the household if they are within the US, still in need, and intend to return to the residence. (18 NYCRR § 349.4.)
- b. *Social Security/Supplemental Security Benefits*
 - i) **SSI**
 - (1) *Applicants*
 - (a) If client is incarcerated when he *applies* for SSI and is otherwise eligible, he is not eligible for payment of benefits until the first day of the month following the day of release from incarceration. (20 CFR § 416.211.)
 - (2) *Current Recipients*
 - (a) *Incarceration for an entire calendar month or more:* Recipient is ineligible starting with the first entire calendar month in which she is incarcerated (*i.e.*, incarcerated at beginning of month and throughout the month), and payments are suspended effective with such first full month. (20 CFR §§ 416.211 & 416.1325.)
 - (b) *Incarceration for less than a full calendar month:* accordingly, incarceration for less than a month should have no effect on SSI eligibility.
 - (c) *Incarceration for more than a full calendar month, but less than a year:* SSI benefits are only suspended, and can be reinstated effective the day of release. Benefits will be prorated for that month. (20 CFR §§ 416.211, 416.421, 416.1325.)
 - (d) *Incarceration for more than twelve months:* SSI benefits are terminated following 12 consecutive calendar months of suspension for any reason, including incarceration. (20 CFR § 416.1335.) Client must reapply for benefits when released.
 - (e) *Duty to Report:* there is a duty to report ANY period of incarceration. (20 CFR § 416.708(k).)
 - (i) **Practice Tip:** However, when client will be incarcerated for *less than a full calendar month*, there are probably no repercussions from a failure to report since that period of incarceration has no effect on eligibility. Moreover, if your

client reports the incarceration, the SSA could easily make a mistake and suspend benefits.

- ii) As long as person is incarcerated, he is not entitled to dependency benefits (20 CFR § 404.468a); there is no exception for children.
 - iii) These provisions generally apply to any “public institution,” but there are limited exceptions such as some treatment programs, mental institutions, and “community residences.”
- c. **Other Social Security Benefits**
- i) For Social Security benefits such as Social Security Disability, however, where an individual is incarcerated upon conviction of a *felony*, he or she is not entitled to benefits for any month or any part thereof during which he or she is incarcerated, regardless of the length of the sentence. 20 C.F.R. § 404.468(a).

FAMILY LAW

1. Custody and Termination of Parental Rights (TPR)

- a. The federal Adoption and Safe Families Act (ASFA) **requires** the State to sue to terminate parental rights where:
 - i) The parent has been convicted of certain serious crimes against a child, such as murder, manslaughter, or assault; or
 - ii) A child is in foster care for 15 out of the most recent 22 months, unless a compelling reason exists not to terminate parental rights.
 - (1) This time period can expire easily if the parent is incarcerated.
- b. New York State law: the Governor's Permanency Bill, Chapter 3 of the Laws of 2005, effective December 21, 2005:
 - i) Permits commencement of a permanent neglect TPR proceeding where a child has been in foster care either at least one year or 15 out of the most recent 22 months. FCA § 614(d); SSL § 384-b(7)(a);
 - ii) Eliminates the requirement that a child remain in foster care for a consecutive 12 months immediately preceding commencement of a TPR proceeding where a court has determined that the child was severely abused or repeatedly abused and reasonable efforts toward reunification of the child with his or her parent are no longer required and permits the hearing on the TPR to commence immediately. SSL § 384-b(4)(e).
- c. *Informal Custody Agreement*
 - i) At the time of client's arrest, or any time thereafter, client can arrange to place her child in the care of a responsible adult.
 - (1) Does not count as time in foster care under ASFA.
 - (2) Parent does not have to go to court to regain custody, unless the informal custodian refuses to return the child.
 - (3) *Warning:* a “Voluntary Placement Agreement,” which transfers custody of the child to the local child welfare office or Department of Social Services, DOES count as time in foster care and could lead to termination of parental rights.
 - ii) Process
 - (1) Describe the custody arrangement in writing.
 - (2) Both the parent and the caretaker should sign it and, if possible, have it notarized.
 - (3) The Department of Correction should have forms that parents can use. Its form is called a “Temporary Acknowledgment of Custody.”

2. Visitation

- a. *Orders of Protection*
 - i) Criminal OP's for domestic violence frequently require no-contact, effectively terminating visitation to children in the household.
 - ii) **Practice Tip:** Potential solutions include:

- (1) Ask the criminal court to change it to a “limited” OP;
- (2) Ask the criminal court to add a provision: “subject to Family Court modification.”
 - (a) Then client can petition the Family Court *pro se* for formal visitation rights.
- b. *Incarcerated Parents*
 - i) Entitled to monthly visits when children are in foster care.
 - ii) Failure to maintain contact is grounds for termination. (6 months of no contact is considered abandonment.)

3. Child and Spousal Support

- a. Child support is a crucial component of any effort to strengthen low-income families.
 - i) It is also a critical concern for formerly incarcerated parents struggling to obtain employment, rebuild family ties, and reintegrate into New York communities.
- b. **No Modification:** The law in New York currently prohibits those in prison from obtaining modifications of their support orders while they are in prison, creating a situation that assures that upon release, these parents will not only be overwhelmed with penalties for the arrears that have accrued, but these very penalties actually will make it more difficult for them to seek and obtain employment and to support their children.
 - i) New York courts have taken the position that support orders may not be modified downward while a person is incarcerated, because the incarcerated parent’s “current financial hardship is solely the result of his wrongful conduct.” Knights v. Knights, 71 N.Y.2d 865 (1988); Furman v. Barnes, 293 A.D.2d 781 (3d Dep’t 2002); Ontario County o/b/o Powers v. Jackson, 212 A.D. 2d 1056 (4th Dep’t 1995).
 - ii) Moreover, in Onondaga County Department of Social Services o/b/o Gloria T. v. Timothy S., 294 A.D.2d. 27 (2002), the Fourth Department, relying on the Knights case, specifically held that Family Court Act 413(1)(g), which limits arrears to \$500 when a person’s income is below the poverty level, does not apply to someone in prison because the incarcerated parent cannot be allowed to “benefit from the conduct that led to his or her incarceration.”
 - iii) **Consider:**
 - (1) Comparing incarcerated parents to those who reduce their earnings by *choice* fails to acknowledge that one who is incarcerated does not have the choice to *rectify* the situation in prison by increasing his earnings.
 - (2) These policies mean that upon release, most of these parents are faced with overwhelming arrears, which have accrued during a time that they have no ability to make payments.
 - (3) Recent research by the Urban Institute found that aggressive collection of debts played a crucial role in pushing low-income black men ages 25 to 34 out of lawful employment.
- c. **Support Arrears – Consequences**
 - i) No Bankruptcy: Child and Spousal Support arrears are non-dischargeable debt in bankruptcy.
 - ii) Wages Garnished: If the formerly incarcerated parent finds a job, up to 65% of his income may be subject to income execution to recover child support arrears. CPLR § 5242(c)(2)(i),(ii).
 - iii) Loss of Driver’s and Employment Licenses: Arrears of more than four months will likely result in the loss of the parent’s driver’s license and any occupational licenses. FCA §§ 458-a, 458-b, 458-c.
 - iv) Attachment and Seizure of Assets: If the court converts the arrears to a money judgment, any bank accounts or other assets will be subject to seizure in their entirety, making reentry even more difficult. FCA §§ 454, 460; CPLR §§ 5201, 5202, 5203 *et. seq.*
 - v) Loss or Denial of Passport: If a case is being handled by the state child support enforcement agency and the obligated parent is more than \$5,000 in arrears, the parent may not be able to obtain a passport. If the individual already has a passport, the passport may be revoked or

limited. 42 USC §§ 652(k)(1) & 654(31). Effective October 1, 2006, if more than \$2,500 is in arrears is owed, the passport denial/revocation procedures may be invoked.³²

4. Family Offense Proceedings (Domestic Violence)

- a. *Collateral Estoppel by Conviction*: If a criminal court case based on the same underlying allegations as a Family Offense case in Family Court results in a plea or a conviction, the defendant is at risk for summary judgment in the Family Court under the doctrine of collateral estoppel. This doctrine applies where the two cases involve the same issues between the parties. Suffolk County Dept. of Social Services on Behalf of Michael V. v. James M., 83 N.Y.2d 178, (1994). A criminal conviction, whether by plea or after trial, is conclusive proof of its underlying facts in a subsequent civil action. Graves v. DiStasio, 166 A.D.2d 261 (1st Dept. 1990); Colby v. Crocitto, 207 A.D.2d 764 (2d Dept. 1994). If the opposing party secures a finding of summary judgment as to one or more family offenses, their attorney may either ask to go forward to fact-finding with regard to any acts that were not the subject of the concurrent criminal proceeding or may seek to move directly to disposition under FCA §841.

5. Foster/Adoptive Parents (Soc. Serv. L. § 378-a; 18 NYCRR § 443.8)

- a. Convictions can lead to denial of application as foster parent and/or removal of the child.
- b. Mandatory Disqualifications**
 - i) For felony convictions for child abuse or neglect, a crime against a child, or a crime involving violence (includes attempted robbery and attempted criminal possession of a weapon) (unless spousal abuse was a factor in causing the prospective parent to commit such a crime)
 - ii) For any felony conviction within the past five years for physical assault, battery, or a drug-related offense.
 - iii) **Safety Valve**: based on welfare of the child.
- c. Discretionary Denials**
 - i) If the foster or adoptive parent, or any person over 18 residing in the home, was ever charged with or convicted of any crime.

DRIVERS' LICENSES

1. NYS Driver's License (VTL §§ 510, 510-a, 510-b, 510-c, 1192-1194)

- a. Certificate of Relief from Disabilities is generally **ineffective** in lifting suspensions or revocations. (VTL § 1193.)
- b. Alcohol and Drug Violations³³**

Driving While Intoxicated (DWI), Blood Alcohol Concentration (BAC) of .08% or higher	Minimum 6-month revocation
Second DWI within 10 years	Minimum 1-year revocation
Aggravated DWI (.18 BAC or higher)	Minimum 1-year revocation
Second Aggravated DWI within 5 years	Minimum 18-month revocation*
Driving While Ability Impaired by Alcohol (DWAI)(.05 to .07 BAC)	90-day suspension
DWAI committed within 5 years of any	Minimum 6-month revocation

³² Deficit Reduction Act of 2005, Section 7303 (to be codified at 42 USC §§ 652(k)(1) & 654(31)).

³³ <http://www.nysdmv.com/broch/c12.htm>.

previous alcohol or drug-related violation.

Driving While Ability Impaired by a Drug (DWAI-Drug)	6-month suspension
Second DWAI-Drug within 10 years	Minimum 1-year revocation
DWAI - More than one drug or a combination of drugs and alcohol	6-month revocation
Second DWAI-Drug/Alcohol Combination within 10 years	Revoked for at least 1-year/18 months*
First alcohol or drug-related violation except Zero Tolerance, by a driver, under age 21 (includes out-of-state convictions)	1-year revocation**
Second alcohol or drug-related violation, except Zero Tolerance, by a driver under age 21	Revocation until age 21 or 1-year, whichever is longer**
Driving Under the influence (DUI) outside New York State: Alcohol.	Minimum 90-day revocation

* A driver with an Aggravated DWI violation conviction within the prior 10 years will receive a minimum 18-month revocation if convicted of DWI, DWAI/Drugs or DWAI-Drug/Alcohol Combination; and

A driver with a prior DWI, Aggravated DWI, DWAI/Drugs or DWAI-Drug/Alcohol Combination within the prior 10 years will receive a minimum 18-month revocation if convicted of aggravated DWI.

** These penalties apply even if the driver is adjudicated as a youthful offender.

NOTE: Three or more alcohol or-drug-related convictions or refusals within 10 years can result in permanent revocation with a waiver request permitted after at least five years.

c. **Other Alcohol and Drug-Related Laws**

i) Chemical test refusal revocations

(1) Separate from and in addition to those for alcohol- or drug-related violations.

(2) If the refusal is later confirmed at a DMV hearing, license is revoked for at least one year and a civil penalty of at least \$500 is assessed.

(3) If the person is under 21 years old when she refuses to take a test, or if her refusal is within five years of a previous alcohol or drug-related violation or refusal, her license will be revoked for at least 18 months.

(a) If the person is under 21, a second refusal within five years requires license revocation for a least one year or until she turns 21, whichever is longer.

ii) If the person illegally purchases alcoholic beverages by using a New York State driver license or Non-Driver ID card as proof of age, state law requires suspension of driver license, or privilege of applying for a license.

d. **Other Offenses and Crimes**³⁴

³⁴ <http://www.nysdmv.com/broch/c12.htm>.

Homicide, assault or criminal negligence resulting in death from the operation of a motor vehicle	6-month revocation
False statement on an application for a license or registration, or substitution by another driver for a road test:	
Conviction in criminal court	6-month revocation
Finding by a DMV Administrative Law Judge	1-year revocation
Speed contest	6-month revocation
Second speed contest within 3 years	1-year revocation
3 speeding and/or misdemeanor traffic violations committed with 18 months	6-month revocation
3 violations for passing a stopped school bus within 3 years	6-month revocation
Leaving the scene of a fatal or personal injury accident	6-month revocation

i) Failure to pay child support – **indefinite**

e. **For-Hire and Commercial Motor Vehicle Violations**

i) The penalties that apply to drivers of commercial motor vehicles, including trucks, taxis and buses, may be different, and are usually more severe. *See* the New York State Commercial Drivers Manual (CDL-10), available at most DMV offices and online at <http://www.nydmv.state.ny.us/broch/cdlmanual.htm>.

(1) *E.g.*: Commercial licenses (VTL § 510-a(1)-(2)): suspension for at least one year for certain felony drug convictions. (VTL § 1192.2(5).)

(2) Excerpt from: **CDL-10, 1.6.2 – Alcohol, Leaving the Scene of an Accident, and Commission of a Felony**

- (a) It is illegal to operate a CMV if your blood alcohol concentration (BAC) is .04% or more. If you operate a CMV, you shall be deemed to have given your consent to alcohol testing.
- (b) You will be put out-of-service for 24 hours if you have any detectable amount of alcohol under .04%.
- (c) You will lose your CDL for at least one year for a first offense for:
 - (i) Driving a CMV if your blood alcohol concentration is .04% or higher.
 - (ii) Driving any vehicle under the influence of alcohol.
 - (iii) Driving any vehicle while under the influence of a controlled substance.
 - (iv) Refusing to undergo blood alcohol testing.
 - (v) Leaving the scene of an accident without reporting.
 - (vi) Committing a felony involving the use of a vehicle.
 - (vii) Operating a CMV while your CDL is revoked, suspended, or canceled for prior violations, or if disqualified from operating a CMV, or if convicted for causing a fatality through negligent operation of a CMV, including, but not limited to crimes of vehicular manslaughter or criminally negligent homicide.
- (d) You will lose your CDL for at least three years if the offense occurs while you are operating a CMV that is placarded for hazardous materials.

- (e) You will lose your CDL for life if convicted a second time for any of the offenses listed above.
 - (f) You will lose your CDL for life if you use a CMV to commit a felony involving controlled substances.
- f. **Waivers, Fees, and Civil Penalties**
- i) **Fees and Civil Penalties**
 - (1) These are separate from and in addition to any fines paid upon conviction.
 - (2) If your license is **suspended**, you must pay a \$25 fee to have a suspension terminated, unless it is an indefinite suspension or a suspension pending a hearing, prosecution or investigation.
 - (a) The fee is \$35 for failure to answer a traffic ticket, or failure to pay a fine, mandatory surcharge, or crime victim assistance fee.
 - (3) If your license is **revoked**, you may not apply for a new license until you pay a \$50 non-refundable re-application fee. The fee does not apply to drivers whose licenses are revoked for not having insurance, or those who complete New York State’s Drinking Driver Program.
 - (4) After some revocations, you must pay a **state-mandated civil penalty** before your application for a new license can be accepted:
 - (a) No-Insurance or Uninsured Accident Revocation - \$750 civil penalty
 - (b) Chemical Test Refusal Revocation - \$500 Civil penalty
 - (c) Chemical Test Refusal With Prior Refusal or Alcohol-Related Violation in Previous 5 Years - \$750 civil penalty
 - (5) For a more extensive discussion of fees, fines, and surcharges, see “Sentencing for Dollars” (Center for Community Alternatives) at www.communityalternatives.org/articles/sentencing_dollars.html.
 - ii) **Waivers of Suspension** (VTL § 510 & 530)
 - (1) **Court:** The sentencing court can grant waivers of suspension in certain cases.
 - (a) Under VTL § 510(2)(b)(v), the sentencing court can waive suspension for drug offenses if it determines that there are “there are compelling circumstances warranting an exception.”
 - (2) **Conditional or Restricted Use Licenses** (VTL § 530)
 - (a) The DMV can grant a conditional use license when a license is required for an employment, business, trade, occupation or profession; for travel to and from a class or course at an accredited school, college or university or at a state approved institution of vocational or technical training; or for travel en route to and from a medical examination or treatment as part of a necessary medical treatment for such participant or member of his household.
 - (i) **Practice Tip:** conditional licenses are generally easier to get from the DMV than a waiver from the court.
 - (ii) **Warning:** The DMV will revoke the conditional license if the holder is convicted of any other moving violation, such as an illegal U-turn or speeding ticket. *See* VTL § 530(3).
 - (b) **DMV Waiver Office:** (518) 474-0774. <http://www.nysdmv.com/broch/c12.htm> “Suppose Your License Were Taken Away”
 - (c) Can get a **conditional license** while criminal case is pending. (\$75 fee.)
 - (i) The DMV can issue a conditional license to a driver who qualifies and who has a NYS license that is suspended or revoked because of an alcohol or drug-related violation. The driver must attend a Drinking Driver Program (DDP) approved by the DMV. If driver qualifies, the DMV sends instructions about how to enroll in the DDP with the suspension or revocation notice.

- (ii) After plea and sentencing, court will revoke conditional license, but DMV will re-issue it automatically without a fee.
 - 1. However, the client then often must get a letter from her Probation Officer affirmatively stating that they do not object to the license.
- (d) When a driver with a **Commercial Driver's License (CDL)** is convicted for DWI in a *non-commercial vehicle*, the CDL is revoked and he or she cannot pursue his livelihood.
 - (i) Under **prior law**, the driver could get a **conditional license** through the Drinking Driver Program that is valid for the operation of a commercial vehicle *only if*
 - 1. he received a Certificate of Relief from Disabilities (CRD), and
 - 2. he took the CRD to the DMV when he applies for entry into the Drinking Driver Program and the conditional license.
 - (ii) **Warning:** Effective September 30, 2005, people with CDL licenses are **no longer eligible** for conditional licenses with commercial privileges, even if a court issues a CRD.³⁵ See Chapter 60 of Laws of 2005, codified at VTL §§ 510-a, 530(5), 1193, 1194, & 1196.

2. Non-Resident Drivers

- a. A client with an out-of-state license can lose her privilege to drive in New York State for any of the reasons above.
- b. To request that privileges be restored after the mandated revocation period has passed, client **must** write to the State Department of Motor Vehicles:
 - Driver Improvement Bureau
 - NYS Department of Motor Vehicles
 - 6 Empire State Plaza
 - Albany, NY 12228
- c. The request must be accompanied by a \$25 restoration fee in the form of a check or money order made out to the Commissioner of Motor Vehicles. Any civil penalties for refusing to take a chemical test or for driving without insurance also must be paid before the request can be considered.

FORFEITURES (CITY AND STATE LAW)

1. District Attorney forfeitures (CPLR Article 13-A)

- a. Can seek forfeiture of (1) proceeds of a crime; (2) substituted proceeds of a crime (property obtained by the sale or exchange of proceeds of a crime); or (3) the instrumentality of a crime. The prosecutor can get a money judgment.
- b. Can be “preconviction” (only where underlying felony involves narcotics or marijuana) or “postconviction,” and can be against the criminal defendant or an uncharged property-holder.
 - i) The *postconviction* action requires conviction of any felony (not just drug-related);
 - ii) In the *preconviction* action, the prosecutor only has to prove the occurrence of a drug-related felony by clear and convincing evidence.
 - (1) Therefore, an acquittal or dismissal of the criminal charges does not bar the 13-A proceeding (and neither does a reduction to a misdemeanor).
 - (2) **Practice Tip:** However, where there is an acquittal or dismissal of the criminal charges, then all official records and papers of the criminal prosecution are sealed pursuant to C.P.L. § 160.50 and cannot be used in the forfeiture proceeding. (See above in “Criminal Records” section for more on the consequences of sealing.)

2. Criminal Forfeiture (Penal Law Article 480)

³⁵ Thank you to Glenn Edward Murray, Esq., of Buffalo for noting this change in the law.

- a. Permits forfeiture of property in a criminal prosecution following defendant's conviction of a felony controlled substance offense.
- 3. Public Health Law §§ 3387 & 3388 – in rem actions**
 - a. Section 3387: seizure and forfeiture of controlled substances, imitation controlled substances, and official NYS prescription forms.
 - b. Section 3388: seizure and forfeiture of vehicles, vessels, or aircraft unlawfully used to conceal, carry, convey, or transport controlled substances (or used to facilitate these activities).
 - i) The vehicle must be used in conjunction with acts constituting a felony under Pen. Law Article 220 (remember, it's a civil case, so acquittal, dismissal, and reduction to a misdemeanor are irrelevant except concerning use of sealed records).
 - ii) Action must be commenced within 10 days of formal demand by owner for return of property.
 - iii) Affirmative defense: that the use of the vehicle was not intentional on the part of any owner.
- 4. Seizure of Unlawfully Operated Vehicles (VTL § 511-b)**
 - a. Police must seize and impound a vehicle when driver arrested or issued summons for aggravated unlicensed operation of a motor vehicle in the second or third degree (VTL § 511(2)&(3)).
 - i) VTL § 511(2) is a misdemeanor.
 - b. Notice will be sent to last registered owner after 30 days; make sure that the owner makes a formal demand for the return of the vehicle as soon as possible – failure to demand within 30 days of the notice leads to a forfeiture of the vehicle.
- 5. New York City – NYPD Property Clerk Forfeitures (NYC Admin. Code § 14-140 and Chapter 12 of Title 38-A of the RCNY)**
 - a. Examples:
 - i) DWI Motor Vehicle forfeitures
 - ii) Drug forfeitures
 - iii) Prostitution forfeitures
 - b. The Property Clerk must prove that the subject property was “used as a means of committing crime or employed in aid or in furtherance of crime.” (NYC Admin. Code § 14-140(e)(1).)
 - c. Must commence action within 25 days of formal demand by owner for return of property (if not held as Arrest Evidence). (38-A RCNY § 12-36(a).)
 - d. The ADA **cannot** bind the Property Clerk in a plea agreement related to the property.
 - e. Consult Reentry Net/NY at www.reentry.net/ny for extensive materials on forfeitures in New York City.
- 6. Practice Tip:** a Certificate of Relief from Disabilities issued at sentencing can relieve *automatic* forfeitures.

CIVIC PARTICIPATION

- 1. Voting (Elec. L. §§ 5-106(2)-(5))**
 - a. The right to vote is determined by the law of the state in which one seeks to vote.
 - b. *Felonies:* In NYS, people convicted of felonies who are sentenced to imprisonment (incarceration in a state facility) cannot vote or register until they are pardoned, their maximum sentence expires, or they are discharged from parole.
 - i) Disability does NOT apply if there was no sentence of imprisonment or if the sentence has been suspended.
 - (1) Therefore, the right to vote is not affected by felony convictions resulting in sentences to incarceration in local jails.
 - ii) Right to vote is not affected by a misdemeanor conviction.

- c. In New York, the restoration of the right to vote is *automatic* and does not require a Certificate of Relief from Disabilities, regardless of what some Boards of Elections claim.
- d. **New York Election Law automatically restores the right to vote to individuals convicted of a felony once they have served their maximum sentence or have been discharged from parole.** Individuals who are sentenced to probation or convicted of a misdemeanor never lose their right to vote. The law imposes no additional burdens, conditions or qualifications on who may vote, aside from the usual age, citizenship, and residency requirements. However, misinformation about voting rights for those with criminal convictions is rampant. Individuals involved in the criminal justice system are not informed about whether they can or cannot vote and when their voting rights are automatically restored. Local boards of elections are equally misinformed, providing inaccurate information to the public about voter eligibility laws and illegally rejecting voter registration applications from eligible voters with criminal convictions. This misinformation prevents countless eligible voters in New York from voting and severely dilutes the votes of the African-American community.
- e. **Practice Tip:** For individuals still on parole, a Certificate of Relief from Disabilities does restore a citizen’s right to vote if she is not currently incarcerated. (*See* Correct. L. § 701.) Once the CRD is granted, they can register to vote.

2. Jury Service

- a. **State** – Jud. L. § 510(3): Persons convicted of a felony may not serve on a jury in NYS.
- b. **Federal** – 28 USC § 1865(b)(5): Persons with charges pending for or who have been convicted of a state or federal crime that carries maximum sentence over 1 year are disqualified from serving on federal grand or petit jury, unless their “civil rights” have been “restored.”

FEDERAL STUDENT LOANS

- 1. **Automatic ineligibility** (Title IV funds): 20 U.S.C. § 1091(r)(1) suspends eligibility for any grant, loan, or work assistance for students convicted of *any offense* under any Federal or State law involving the possession or sale of a *controlled substance*, but **only for conduct occurring while receiving student aid**.³⁶ Federal law also denies the Hope tax credit to students and their families if the student has a prior felony drug conviction.
 - a. *Definition:* the term “controlled substance” is defined in 21 U.S.C. § 802(6), which includes marijuana.
 - b. The federal benefits referenced are those under 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.*
 - c. The period of suspension begins on the date of the conviction and ends after the following intervals:

Type of Offense	Ineligibility Period for 1 st Offense	Ineligibility Period for 2 ^d Offense	Ineligibility Period for 3 ^d Offense
Possession of a controlled substance	1 year	2 years	Indefinite
Sale of a controlled substance	2 years	Indefinite	

- d. **Warning:** A conviction for Unlawful Possession of Marijuana, PL 221.05, will make a student ineligible for federal aid. A person is ineligible under Section 1091 because of a conviction for any

³⁶ On February 8, 2006, this provision was amended to bar student loan eligibility only when the drug conviction was for conduct that occurred during receipt of student loans. *See* Pub. L. No. 109-171, § 8021, 120 Stat 4 (February 8, 2006).

controlled substance “offense,” not necessarily a “crime.” In New York, PL 221.05 is an offense (a violation), although not a crime, and marijuana is a controlled substance.

- e. **Waiver:** Under § 1091(r)(2), a student may regain eligibility before the above period expires if:
- i) The student satisfactorily completes a drug rehabilitation program that
 - (1) Complies with criteria set out by the Secretary of Education:
 - (a) Be qualified to receive funds from federal, state, or local government, or from a federally- or state-licensed insurance company; **OR**
 - (b) Be administered or recognized by a federal, state, or local government agency or court, or a federally- or state-licensed hospital, health clinic, or medical doctor
 - AND**
 - (2) Includes 2 unannounced drug tests; or
 - ii) The conviction is reversed, set aside, or otherwise rendered nugatory.

ADDITIONAL CONSEQUENCES

1. Firearms

- a. **New York:** Persons convicted of a felony or a “serious offense” are prohibited from possessing a rifle or shotgun and are ineligible to obtain a firearm license. (P.L. § 400.00(1).)
 - i) “Serious offense” is defined as listed offenses in P.L. § 265.00(17).
 - ii) License revocation occurs automatically upon such a conviction. (P.L. § 400.00(11).)
 - iii) Effect of a Certificate of Relief from Disabilities is complex. (See caselaw.)
- b. **Federal** (18 USC § 922(g))
 - i) It is a **federal crime** to ship, transport, possess, or receive any firearm or ammunition by anyone:
 - (1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
 - (2) who has been convicted in any court of a misdemeanor crime of domestic violence.
 - (3) who is subject to a non-*ex parte* court order of protection in favor of an intimate partner or child; or
 - (4) who is a fugitive from justice;
 - (5) who is an unlawful user of or addicted to any controlled substance; or
 - (6) who has been discharged from the Armed Forces under dishonorable conditions.
 - ii) Prior state convictions must have rights restored pursuant to state law.
 - (1) Effect of a Certificate of Relief from Disabilities is complex. (See caselaw.)

2. Revocation of Probation or Parole

- a. Misconduct during probation or parole may result in resentencing arising from a new conviction OR even after a dismissal or acquittal (upon satisfaction of an administrative burden of proof).

3. Drug-Related Bars For Other Federal Benefits (21 USC § 862)

- a. **Definition:** “Federal Benefit” here means any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States.
 - i) It does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility.
- b. Drug traffickers and drug possessors are **ineligible** for the listed federal benefits for a specified period of time after conviction.
- c. **Waiver:** waivers are available under the statute, usually upon evidence of rehabilitation and attendance at a long-term treatment program.

4. **Government Contracting:** Contractors face suspension or debarment. Regulations permit this administratively upon charge or indictment, or upon administrative findings.
5. **Military Service**
 - a. In most cases, a felony conviction will preclude military service, but each branch has the authority to make exceptions. (10 U.S.C. § 504; 32 CFR § 96.1 *et seq.*)
 - b. **Army:** Conducts a background check. Generally, a recruit will be rejected for six or more outstanding traffic violations, three or more minor, non-traffic violations, or four misdemeanor convictions.
 - c. **Air Force:** Categorizes offenses into five categories, with offenses in the highest three (1 to 3) categories resulting in rejection. Category 3 offenses include assault, breaking and entering, and shoplifting. With the exception of simple marijuana possession, drug convictions automatically disqualify applicants.
 - d. **Navy:** Convictions are subject to a waiver process. Generally, only nonviolent crimes, juvenile offenses, and one-time occurrences of past drug use can be waived.
 - e. **Marines:** Rejects anyone with a pending case. Convictions are subject to a waiver process, but no drug offenses (including possession) or domestic violence convictions will be waived. They will look at arrest charges to determine whether the applicant pled to a lesser charge.
 - f. **Practice Tip:** Generally, no branch of service will accept a person with a pending case or still under any conditional sentence such as a Conditional Discharge for a violation. ACDs are “pending” until the ultimate dismissal. If your client is in the process of enlisting, prosecutors and judges have been willing to shorten adjournment periods for ACDs and the length of Conditional Discharges. For violations convictions, also consider executed sentences such as time served.
 - g. **Military Pensions** (39 USC § 1505)
 - i) *Payment of pension during confinement in penal institutions:* no military pension paid to or for an individual an incarcerated individual after 60 days in custody pursuant to felony or misdemeanor conviction.
 - (1) Pension may be paid to spouse and children of a veteran disqualified because of incarceration.
6. **Insurance Coverage**
 - a. *Auto Insurance* (Ins. Law § 3425): New York law permits insurance companies to cancel, or refuse to renew, insurance policies if the driver’s license of the named insured – **or** of any other person who customarily operates the automobile that is insured under the policy – is suspended or revoked. (Exception: suspensions of probationary licenses under VTL § 510-b.)
 - b. *Personal Lines Insurance* (Ins. Law § 3425)
 - i) *Definition:* Insurance for loss of or damage to residential real property of not more than four dwelling units and personal property. Includes tenant’s and homeowner’s insurance.
 - ii) New York law permits insurance companies to cancel, or refuse to renew, insurance policies
 - (1) for a conviction of a crime arising out of acts increasing the hazard insured against;
 - (2) for willful or reckless acts or omissions increasing the hazard insured against.
 - iii) Analogous cancellation authority exists for commercial lines insurance under VTL § 3426.
7. **International Travel**
 - a. **Entry to Other Countries:** Persons with criminal records may be denied entry to or visas for foreign countries.
 - i) Canada has been stopping a number of truck drivers from crossing the border because they have criminal records that appear in a computer search at entry. They now have to apply for a waiver through an Application for Criminal Rehabilitation from a Canadian Immigration Office. The application costs \$200 or \$1,000, depending on the severity of the crime.
 - (1) See <http://www.cic.gc.ca/english/applications/rehabil.html>.
 - b. **Passports** (22 USC § 2714)

- i) The US State Department will refuse to issue a passport to any person convicted of a felony federal or state drug offense if she used the passport or otherwise crossed an international boundary in committing the offense.
- ii) An issued passport may be revoked upon conviction of a disqualifying offense. The revocation lasts during any period that the person is imprisoned or on parole or supervised release as a result of the conviction.

LIABILITY IN RELATED CIVIL CASES

1. Examples of types of cases

- a. Assault/Robbery
- b. Larceny (especially corporate retail stores)
- c. Any intentional torts
- d. Personal injury
- e. Judgment enforcement

2. Statutory Provisions

- a. **“Son of Sam” Law for Crime Victims** (Exec. L. § 632-a)
 - i) Permits recovery of *all profits* from a crime;
 - ii) Permits recovery of money damages from all funds and property received from *any source* while the defendant was incarcerated or on conditioned release;
 - iii) Extends Statute of Limitations
 - (1) Generally, a crime victim has to sue within 7 years of the date of the crime. (CPLR § 213-b);
 - (2) Under the Son of Sam law, a crime victim can bring a civil action to recover money damages from a person convicted of the crime within 3 years of the *discovery* of any profits from the crime, or of funds of the convicted person;
 - (a) If the defendant was convicted of a “specified crime,” the crime victim must sue within 3 years of the *release* from prison and the *end* of all forms of conditioned release.
 - (b) *Specified Crimes* include violent felonies, B felonies, “1st degree” felonies, grand larceny in 2nd and 4th degrees, and possession of stolen property worth more than \$50,000.
- b. **Other Statutory Provisions**
 - i) Gen. Oblig. Law Art. 11 (Obligations to Make Compensation or Restitution)
 - (1) *E.g.*: Liability for Shoplifting – Gen. Oblig. § 11-105
 - (a) Liable for retail value of damaged goods, up to \$1,500;
 - (b) Liable for additional penalty up to \$500;
 - (c) Establishes Parental liability for minors.
 - (d) **Warning:** debt-collecting law firms often send letters to clients post-arrest claiming treble damages and the civil penalty, even if no property left the store.
 - (e) **Practice Tip:** warn clients to contact you if they receive demand letters from debt-collecting law firms. Contact me for a standard strategy for responding.
 - ii) Gen. Oblig. Law Art. 12 (Drug Dealer Liability Act)
- c. **Victims of Gender-Motivated Violence Act** (NYC Admin. Code §§ 8-901 to 8-907)
 - i) New York City only.
 - ii) Any person claiming to be injured by an individual who commits a crime of violence motivated by gender can sue for compensatory and punitive damages, injunctive and declaratory relief, and attorneys' fees and costs. (NYC Admin. Code. § 8-904.)
 - iii) Statute of Limitations: 7 years after the crime.

3. Legal Considerations

- a. *Restitution – Confession of Judgment*

- i) Often, the prosecutor requires a confession of judgment to make up the balance of whatever is not covered by restitution in the criminal case. Restitution is enforceable by criminal justice penalties (usually through probation), while a confession of judgment is only enforceable through civil remedies (attachment, income execution, property execution, liens, etc.). CPLR 3218 outlines the process for a "judgment by confession," basically providing that a confession of judgment can be filed as a judgment with the local county clerk without bringing a new civil action. A party has three years to file the confession of judgment in order to get an enforceable civil judgment. Once the money judgment is filed, the beneficiary of the judgment has 20 years to enforce it. CPLR 211(b). In sum, if client signs a confession of judgment as part of a plea, then it is as if the complaining witness won a civil court judgment against her.
 - ii) The criminal court clerks are supposed to send notification of confessions of judgment in criminal cases to the county clerk to be filed as civil judgments. As a general matter, all civil judgments are reported to the major credit bureaus and will appear on a person's credit report. However, it is unclear how consistently the criminal court clerks actually send this information to the county clerks, and the practice is likely to vary widely by county.
 - b. *Collateral Estoppel*:
 - i) A criminal conviction or plea may have preclusive effect in a subsequent civil proceeding and may establish monetary liability for your client. S.T. Grand, Inc. v City of New York, 32 NY2d 300 (1973).
 - ii) Violations: There is no collateral estoppel effect of a conviction for a violation. Gilberg v. Barbieri, 53 N.Y.2d 285 (1981) (harassment violation conviction after a bench trial).
 - c. *Evidentiary impact*: statements made during criminal proceedings or plea allocutions can be used against your client in civil or administrative proceedings as admissions or prior inconsistent statements.
 - d. Insurance companies may use convictions, pleas, evidence, or admissions to assert an exclusion from insurance coverage.
- 4. Debtor Protections are Few**
- a. *Bankruptcy*
 - i) Debts arising out of intentional torts to the person or property of another are non-dischargeable in bankruptcy. (11 USC § 523(a)(6).)
 - ii) Criminal fines and criminal orders of restitution are non-dischargeable in both Chapter 7 and Chapter 13. (11 USC § 523(a)(7) & (13).)
 - iii) Child Support arrears, even those that accrued during incarceration, are non-dischargeable.
 - iv) Debts for causing death or personal injury while driving under the influence of alcohol or drugs are non-dischargeable in both Chapter 7 and Chapter 13. (11 USC § 523(a)(9).)
 - b. Public Assistance benefits and earnings while on public assistance are shielded from levy or judgment. (SSL 137 & 137-a.)

CRIMINAL PROCEEDINGS RELATED TO POVERTY LAW

1. **Examples**

- a. Welfare Fraud (PL Art. 158)
- b. Public Housing, Section 8, or Unemployment Fraud
 - i) Usually charged as Larceny under PL Art. 155 or Offenses involving false written instruments under PL Art. 175.
- c. Trespass related to landlord-tenant disputes
 - i) You may find that your client was illegally evicted and was actually entitled to be on the property

2. **Practice Tips**

- a. These charges are based on complicated areas of the law. You should talk to a legal services lawyer and/or familiarize yourself with the underlying eligibility process.
 - i) To find a local legal services provider, use www.lawhelp.org/ny.
 - ii) The relevant agencies generate special forms with arcane codes that are hard to interpret.
 - iii) Also, the agencies frequently make mistakes calculating eligibility – this is no different in criminal cases.
 - (1) The income and asset eligibility determinations will be crucial for felony or misdemeanor amounts.
 - (2) Ask a legal services lawyer to be your “expert.”
- b. *Discovery*
 - i) You can get court-ordered discovery from the relevant agencies;
 - ii) For some, including all PHA’s, you can use FOIA or FOIL with a client release.

**The Consequences of Criminal Proceedings
NEW YORK STATE RESOURCES**

1. **reentry.net/ny**

- a. A free information clearinghouse for criminal defense, legal services, social services, and policy advocates on the collateral consequences of criminal proceedings and reentry. It includes an online library of hundreds of resources selected by experts, directories of service providers, the latest news and events, and online communication tools. (www.reentry.net/ny)

2. **Other Resources on collateral consequences**

- a. The Bronx Defenders, Civil Action Practice (McGregor Smyth, Managing Attorney): (718) 838-7878; mgregors@bronxdefenders.org.
b. The Legal Action Center: (212) 243-1313
i) The LAC is an advocacy organization committed to overcoming civil disabilities related to criminal convictions.

3. **Legal Referral information:**

- a. LawHelp (www.lawhelp.org) is an excellent resource. You can enter your zip code, city, or county (borough) and find legal services organizations based on practice areas. You can also find client and pro se materials under the Know Your Rights tab.

4. **Poverty Law questions:**

- a. Outside of New York City, use www.lawhelp.org/ny to find your local legal services provider.
b. In New York City, call Legal Services for New York's Legal Support Unit at (646) 442-3600.
i) They have experts on-call in each major area of poverty law: Housing, Government Benefits, HIV/AIDS, Family Law, and Social Security/SSI.
ii) They also offer extensive trainings and CLEs in these practice areas.

5. **Immigration Consequences**

- a. Immigrant Defense Project website: www.immigrantdefenseproject.org. Includes updates, manuals, alerts, briefs, website links, and information on the national **Defending Immigrants Partnership**, a national effort to ensure that immigrants in criminal proceedings nationwide are properly counseled regarding the immigration consequences of choices that they must make when accused of a crime in criminal proceedings.

6. **Federal Law**

- a. *Internal Exile: Collateral Consequences of Conviction in Federal Laws and Regulations* (Study by The ABA Commission on Effective Criminal Sanctions & the Public Defender Service for the District of Columbia, January 2009) (<http://www.reentry.net/library/attachment.140845>)
b. DOJ Report (2000): *Federal Statutes Imposing Collateral Consequences Upon Conviction* (http://www.usdoj.gov/pardon/collateral_consequences.pdf)

7. **Essential Publications** – we recommend that EVERYONE obtain a copy of the following:

- a. Legal Action Center (available at www.lac.org and www.hirenetwork.org)
i) *How to Get and Clean up Your New York State Rap Sheet*
ii) *Setting the Record Straight: What Defense Attorneys Need to Know About the Civil Consequences of Client Criminal Records*
iii) *Employment Discrimination and What To Do About It*
iv) *Occupational Licensing Survey*
b. NYSDA Immigrant Defense Project, *Representing Noncitizen Criminal Defendants in New York State* (Manuel Vargas).

8. **Useful Websites**

a. **Practice Resources**

- i) Reentry Net/NY: www.reentry.net/ny
ii) Legal Action Center: www.lac.org, especially the 50-state survey at www.lac.org/roadblocks.html.
iii) National H.I.R.E. Network: www.hirenetwork.org. (Includes extensive publications and listing of relevant agencies and legal services in each state.)
iv) Community Legal Services: www.clsphila.org

- v) Pro Bono Net: www.probono.net (Practice Areas for NY in most relevant areas)
- vi) Restoring Right to Vote: www.usdoj.gov/crt/restorevote/restorevote.htm (a state by state survey).

b. Reference

- i) National Reentry Research and Policy Library (Reentry Net): www.reentry.net.
- ii) CLASP, CLS, *Every Door Closed: Barriers Facing Parents With Criminal Records*:
www.clasp.org/publications/every_door_closed.pdf.
- iii) Jeremy Travis, Amy L. Solomon, & Michelle Waul, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry* (The Urban Institute June 2001)
(http://www.urban.org/pdfs/from_prison_to_home.pdf).
- iv) National Criminal Justice Reference Service:
<http://virlib.ncjrs.org/corr.asp?category=44&subcategory=170>;
- v) The Urban Institute:
www.urban.org/content/PolicyCenters/Justice/Projects/PrisonerReentry/overview.htm.