
Tips for Judges to Mitigate Collateral Sanctions¹

*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.)

IMMIGRATION

- Before entering any guilty plea, **advise defendant** that the conviction, even a violation or misdemeanor, could result in mandatory deportation for any non-citizen (including lawful residents). ♦ Adjourn proceedings to allow defendant to explore immigration consequences. ♦ Allow defendants to withdraw a guilty plea entered without immigration counseling.
- For young defendants:
 - ▶ Consider giving immigrant defendants a **Youthful Offender** disposition. ♦ A YO is not a “conviction” for immigration purposes and will generally not make an immigrant deportable.
 - ▶ Consider **transfer to Family Court** for underage immigrant defendants. ♦ A Family Court disposition will generally not make an immigrant deportable.
- Exercise **judicial flexibility** in sentencing. ♦ For example, several grounds of *mandatory* deportation are triggered by sentences of one year or more. In such situations, consider a sentence of *no more than 364 days*.
- Allow immigrant defendants to enter **drug treatment and domestic violence** programs **without** requiring an “up-front” guilty plea or admission. ♦ Otherwise, such a defendant may be deportable because immigration law does not recognize rehabilitative vacatur.
- Understand that federal immigration agents are in NYC jails. ♦ **If bail is set** on a non-citizen defendant, even a green card holder, an immigration detainer may drop.
- Suggest that defense attorneys call the **NYSDA Immigrant Defense Project hotline** (718.858.9658 ext. 206 or 231) for information on the immigration consequences of criminal dispositions.

ACCESS TO CRIMINAL RECORDS & SEALING

- Advise every defendant who pleads guilty to a **violation** that the court records of the conviction are **not sealed** and remain publicly available – including the original charges.
- Consider sealing the court records of violations convictions at sentencing – judges have inherent authority to seal court records.²

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ORDERS OF PROTECTION

- Closely consider whether a full Temporary Order of Protection is really warranted, or whether a **limited TOP** would suffice. ♦ TOPs can render defendants homeless and separate them from their children. ♦ Always issue TOPs “*subject to Family Court Order of Visitation.*”
- Avoid issuing a full TOP that will prevent a **teenager** from attending school (when the arrest was at a school and a teacher/student is the complaining witness). ♦ The school will be conducting a parallel disciplinary proceeding that will determine if suspension is necessary, and the courts should defer to the expertise of the schools in these issues.

FINANCIAL CONSEQUENCES

- Prior to accepting a plea, review with defendant the financial consequences of the conviction, including fines, fees and surcharges. ♦ Where applicable, review other financial consequences such as probation supervision and other probation fees, Driver Responsibility Assessment (VTL §1199), and civil penalties. ♦ Explain that the defendant can apply to the probation department for a waiver of the probation fees for indigence. Executive Law §257-c(1).
- Prior to accepting the plea, explain how these financial penalties are collected (from bail, from inmate account, and civil judgments) and that the defendant’s credit report might be affected.
- At the time of the plea, if restitution is to be ordered, explain to the defendant that if he/she makes restitution in full, prior to sentencing, the imposition of the mandatory surcharge and crime victim assistance fee (Penal Law §60.35(6) and VTL §1809(6)) will be avoided.

CERTIFICATES OF RELIEF FROM DISABILITIES

- Grant Certificates of Relief from Disabilities (CRD) at sentencing for all **violations** convictions and most **misdemeanors**. ♦ CRDs are invaluable tools that shield people against collateral consequences, and sentencing judges have complete discretion to grant them. ♦ While CRDs generally will not avoid deportability or inadmissibility for non-citizens, a CRD may have a positive effect on some forms of discretionary relief. ♦ The sentencing judge simply signs a one-page CRD order, and the clerk enters 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 Memo from Chief Administrative Judge Jonathan Lippman (Sept. 9, 2003).