

---

## Tips for Judges to Mitigate Collateral Sanctions<sup>1</sup>

*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.*

*(Chapter 98 of the Laws of 2006.)*

### 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.<sup>2</sup>

---

<sup>1</sup> Thanks to JoJo Annobil, Benita Jain, Peter Markowitz, Anita Marton, Ward Oliver, Laurie Parise, Martha Rayner, Alan Rosenthal, and Manny Vargas for their suggestions in preparing this checklist.

### 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 will 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 advise the defendant of his or her eligibility to make an application at a later time for such relief.

---

<sup>2</sup> Memo from Chief Administrative Judge Jonathan Lippman (Sept. 9, 2003).