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Chapter 1 : Collateral Consequences Of A Criminal Conviction | Phoenix Criminal Law

Collateral consequences of criminal conviction are the additional civil state penalties, mandated by statute, that attach to criminal convictions. They are not part of the direct consequences of criminal conviction, such as prison, fines, or probation.

For more than 28 years practicing criminal defense, it always bothers me when defense counsel fails to advise clients concerning problems their criminal conviction may cause. As your attorney, it is my job to address your concerns, minimize any potential damage, and take out my crystal ball and advise you of likely problems your decisions may incur. As your attorney, we may not be able to fix the problems, but especially before deciding to accept a plea agreement, you need to understand the risks that your conviction may cause. In addition to the criminal punishment of incarceration, fines, probation, counseling, etc., your conviction may result in substantial collateral consequences. Anyone holding a professional license such as a medical professional, pilot, or law enforcement officer to name just a few, may see their conviction result in the loss of their driving privilege, their ability to possess a weapon, or keep any job with a security clearance. Generally, if the underlying offense involves any sex based crime or involves prostitution, you are likely automatically precluded from obtaining a fingerprint card. However, other crimes may also preclude your card. Mostly listing assault or causing serious injury or death related conduct, the list also includes theft and drug offenses and crimes of domestic violence. In some cases, you may be able to request a hearing and obtain a good cause exception. But, it can take up to 20 days for the board to conduct an expedited review. And they make take up to an additional 80 days to render a ruling. Can you live without your fingerprint card for the possible days for the process to be completed? Concerning DUI convictions, if it is a misdemeanor, you will not be able to drive any vehicle to transport employees or clients of the employer even if it is required for the employment. There are NO exceptions. As a side note, there are no issues with the fingerprint card if the criminal charge is reckless driving or leaving the scene of an accident. It is unclear how the Trump Administration may change current immigration policy where it intersects with criminal conduct. Generally speaking, when prosecuted for any criminal act, a non-US citizen may face immigration consequences. One does not get a free pass for a jail or prison term. Rather, you will need to complete the incarceration, then face deportation. Some convictions may make you deportable. In those cases, you will need to litigate your matter with Immigration. And, some convictions may require deportation, but may allow readmission into the United States after satisfying specific conditions. If you hold professional licenses, you may have reporting requirements for being arrested or subsequently being convicted. Each licensing agency has their own requirements. It is extremely important that you bring this information to your attorney so they can hopefully advise you as to the best course of action. In all cases where reporting is required, you must do so timely. From an employer standpoint, it is much easier to terminate your job if you fail to report. The may include limits on your gun rights, where you can reside and with whom, and child custody and family law concerns to name just a few. The real trick is trying to resolve the case without a conviction, or obtaining a conviction to a crime that does not have collateral consequences. Finding the right path to resolve these issues takes an attorney with the experience to read the right map, avoid the landmines, and minimize any potential damage. I have had success dealing with these issues. Sometimes, I can obtain dismissals. Other times, the best result is a negotiated plea to a crime that does not carry the collateral consequences. Your best defense, at a minimum, is to consult with an experienced attorney. When facing any investigation for a misdemeanor or felony, it is a serious matter. Please contact me, Howard Snader. If you or anyone you know has been accused of any felony or misdemeanor, please call me at

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Chapter 2 : Michigan sex offender registration law held unconstitutional | | CCRC

Collateral Consequences of a Criminal Sexual Conduct Conviction. Charged with a Criminal Sexual Conduct Crime (1st, 2nd, 3rd, or 4th) Degree? Wondering what the consequences would be aside from a Felony on your Record and registering as a Predatory Offender?

Rehabilitation in Minnesota is Decades Old. The state introduced a series of laws that had two goals: Forty-three years later, citizens continue to deal with the difficulty inherent in rehabilitation as a goal. What are collateral consequences? Remember, the Minnesota legislature passed laws whose secondary goal was to protect its citizenry from ex-offenders who might harm them. DHS uses the criminal background check information to disqualify applicants on the basis of prior criminal offenses. The disqualification also can result from an investigation that results in an administrative finding of an offense under Section C. DHS in certain circumstances can set aside the disqualification or the license holder can issue a variance. What types of crimes are we talking about as disqualifying crimes? We are talking about permanent disqualification for persons who violate laws under Section C. There are more but this list is illustrative. The law provides a year disqualification period for crimes of a lesser nature, if the offense occurred less than 15 years ago and the offense was a felony, such as wrongfully obtaining assistance, false representation, food stamp fraud, arson second or third degree, possessing burglary tools, insurance fraud, indecent exposure, and others. Is there an appeal process from an adverse determination? Even though not codified in the law, collateral consequences also affect applicants for jobs in the private business community. Many people who have youthful run-ins with the law find later in life that those activities leave a permanent mark on their record and keep them from getting permanent employment. This may happen even if the criminal offense has nothing to do with the job sought. Anyone facing a plea bargain for criminal activity should consult with an attorney before agreeing to any deal. Learn what effect your decision may have on your employment future before you sign on the dotted line. To talk more about this, or anything else, please contact us. We are your resource for all your criminal law questions.

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Chapter 3 : National Inventory of the Collateral Consequences of Conviction

*Collateral consequences of criminal conduct [Glenn Edward Murray] on calendrierdelascience.com *FREE* shipping on qualifying offers. This book was written to provide a finding tool that will help practitioners identify and evaluate civil consequences of criminal conduct.*

The stigma that attaches to individuals accused of criminal sexual conduct is second in harm only to the ramifications of a conviction. Our society deplores those who violate the bodily integrity of another. If you stand accused of criminal sexual conduct you have to be aware of the many obstacles you face, both in and out of the courtroom. There are five degrees of criminal sexual conduct in Minnesota. Except for certain Criminal Sexual Conduct in the Fifth Degree offenses, the remaining are all felonies. Below are the most common scenarios that lead to each of the different levels of charges. Masturbation or lewd exhibition of the genitals in the presence of a minor under the age of Sexual contact with a person under the age of 13 if the defendant is no more than 36 months older than the victim. Sexual contact with a person between the ages of 13 and 16 if the defendant is no more than 48 months older than the victim or in a position of authority over the victim. Using force or coercion to accomplish sexual contact. Sexual contact with a person between the ages of 16 and 18 if the defendant is 48 months or older than the victim and in a position of authority. Numerous situations where a therapist engages in sexual contact with a patient or former patient. Situations where correctional officers engage in sexual contact with detainees. Nonconsensual sexual contact by a massage therapist. Most of the scenarios detailed above in Criminal Sexual Conduct in the Fourth Degree, but instead of sexual contact, the defendant engaged in sexual penetration of the victim. Sexual contact under circumstances that cause the victim to have a reasonable fear of imminent great bodily harm. The defendant engages in sexual contact that causes personal injury to the victim. Sexual contact accomplished by using a dangerous weapon to create fear in the victim. Sexual penetration of a victim under the age of 13 if the defendant is 36 months or older than the victim. Sexual penetration of a victim between the ages of 13 and 16 if the defendant is 48 months or older than the victim. Sexual penetration under circumstances that cause the victim to have a reasonable fear of imminent great bodily harm. Sexual penetration accomplished by using a dangerous weapon to create fear in the victim. Beyond prison, the collateral consequences of a criminal sexual conduct conviction are tremendous. Due to the severe consequences, those accused of criminal sexual conduct will want to take great care in deciding what lawyer to hire. Criminal sexual conduct cases require a detailed knowledge of the applicable law, an understanding of human psychological behavior, and competency in the various forensic sciences involved including DNA, hair follicle comparisons, and sexual assault examinations. You need a lawyer who can evaluate the evidence in your case and formulate a persuasive legal and factual defense tailored specifically for you. Attorneys Adam Johnson and David Lundgren will make an impact on your case. Call us for a consultation and let us help you put your life back together.

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Chapter 4 : Collateral consequences of criminal conduct: Glenn Edward Murray: calendrierdelascience.com

Talk to your client about the collateral consequences of a conviction in general, and especially about the specific collateral consequences that may accompany a conviction in his or her case.

Posted in Blog , Criminal Law on July 23, Collateral Consequences to a Criminal Charge Everyone knows when you are charged with a criminal case you could face jail time, probation and a fine. However, many times the possible consequences someone suffers can be far reaching and make resolving the case much more complicated. When discussing your case with your attorney you need to make sure you consider how a case might affect you in other ways.

Immigration Issues If you are not a citizen of the United States and get charged with a crime the consequences can be very significant for you. If you are here illegally, on a work visa, a student visa, or some other legal temporary status; a criminal conviction can result in the federal government issue an immigration hold and starting deportation proceedings. How and when the immigration authorities will seek deportation for a criminal charge is a moving target. The current presidential administration can make its own rules on how and when to deport to some degree. Therefore, it is important that your criminal defense attorney works closely with your immigration attorney to make sure the result in your criminal case does not lead to your deportation. It is important that your attorney evaluate not only how the specific conviction will work as a suspension but also evaluate whether it will result in an administrative suspension with the BMV based on the total number of points accumulated. Additionally, you should let your attorney know if you must drive a company vehicle for work. Lastly, if you have a CDL then the implications for you are elevated as they federal regulations governing the CDL can result in much harsher consequences than the initial suspension would call for. Lastly some trade associations or agencies require background checks to maintain association with their organization. In all of these scenarios you need to discuss this issue with your attorney so you can investigate what result will have the least impact on your employment.

Professional Licensing Issues Whether you are a doctor, nurse, engineer, lawyer, accountant, physical therapist, dentist or any other professional that is subject to a licensing board you must always consider how your case may implicate your license. What these boards will or will not consider and what punishment they will impose varies widely. The members of these licensing boards are many times political appointments and therefore how they look at convictions and what they think is a fair punishment can change by the appointment. If you are subject to a professional license you and your attorney need to discuss this. Many times, working the case out to the best possible result is all you can do and then working with the licensing board to avoid consequences is a stage you have to deal with next.

Right to Carry a Firearm The right to carry a firearm is protected by the U. However, when you are facing a criminal charge your right to carry a firearm maybe taken away either permanently or temporarily. Additionally, many times it is a condition of probation that you cannot carry or possess a firearm. If you are a gun owner or need to carry a weapon for your work, you will want to discuss with your attorney the consequences of your case on your ability to carry a firearm.

Future Job Ramifications Maybe your current employer does not care if you receive a criminal conviction. However, you should always be aware that if you have a conviction that can affect your ability to compete in the job market in the future. Many companies conduct criminal background checks and will not hire someone that has a criminal history.

Special Considerations with Sex Crimes Many sex crimes convictions carry tremendous amount of collateral consequences. If you are required to register as a sex offender that will affect where you can live, where you can work, and where you can go. This can include limiting how close you can live to a school, park or daycare. Additionally, your picture name and address may appear on a public website identifying you as a sex offender. There are many considerations that must be accounted for when working through a sex crimes case and should be thoroughly discussed with your attorney. In conclusion, it is always important for you and your attorney to discuss all the ways your criminal case can affect your life. We are available to discuss your case 24 hours a day 7 days a week by calling and then selecting the talk to a criminal

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attorney now option from the menu.

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Chapter 5 : Collateral Consequences of Conviction Act Summary

Collateral Consequences of a Criminal Conviction When people are charged with a crime, they often focus on whether or not they will have to go to jail or whether they can pay the fine. While incarceration and fines are potential consequences conviction, they are not the only consequences.

Introduction[edit] The criminal justice system applies criminal law to defendants accused of committing a crime. If the defendant is found guilty or pleads guilty, the sentencing authority usually a judge imposes a sentence. The sentence is a direct consequence of the conviction. This sentence can take many forms, including loss of privileges e. Collectively, these consequences of the crime are referred to as direct consequences " those intended by the judge, and frequently mandated at least in part by an applicable law or statute. However, beyond the terms of the sentence, a defendant can experience additional state actions that are considered by the States to be collateral consequences such as: These consequences are not imposed directly by the judge, and are beyond the terms of a sentence itself for the actual crime. Instead, they are civil state actions and are referred to as collateral consequences. In most jurisdictions, being charged with a crime can trigger state civil action in the form of an investigation to determine if the charge s trigger the civil statutes that attach to the criminal charges. An example would be criminal charges that can trigger deportation, or the revocation of a professional license, such as a medical, nursing, or pharmacist license. Being subject to collateral consequences has been called a form of civil death. Social consequences include loss of a job and social stigma. These social effects of criminal charges whether or not they lead to convictions can arise in countries where arrests and legal proceedings are matters of public record , thus disseminating the information about the event to the public to the detriment of the accused. Collateral consequences in Australia[edit] In general, the collateral consequences of a criminal conviction are similar to those in other countries. The removal process is not part of the sentence for the criminal offence, and therefore is a collateral consequence. Once a non-resident person is required to leave Canada because of a criminal conviction, they are not entitled to come back to Canada [7] unless they meet the rehabilitation requirements. Pham involved an offender whose sentence would have made him ineligible to appeal his deportation if it were not reduced in length by one day. Pham, lower courts extended its applicability to other collateral consequences. For example, courts have held that stigma or the loss of employment following a conviction to be collateral consequences that can be taken into account during sentencing. Any non-citizen to whom the following applies will generally not be allowed to reside in or visit New Zealand: Collateral consequences in the United States[edit] Outline of collateral consequences[edit] In the United States, collateral consequences can include loss or restriction of a professional license, ineligibility for public funds including welfare benefits and student loans, loss of voting rights, ineligibility for jury duty, and deportation for immigrants, including those who, while not American citizens, hold permanent resident status. In all jurisdictions throughout the U. Deportation has been made an exception by the Supreme Court in *Padilla v.* In recent years, some governmental organizations have, however, discouraged actions that would cause unfairly harsh collateral consequences; for example, the Equal Employment Opportunity Commission EEOC urges human resources managers not to automatically exclude all ex-convicts from employment consideration, particularly if they are members of minorities with disproportionate incarceration rates. In the worst case, this might violate protections under the United States Constitution , including the Eighth Amendment , which forbids " cruel and unusual punishments ". The Supreme Court of the United States addressed collateral consequences of criminal convictions as early as *Washington* , the Court explored ineffective assistance of counsel with respect to collateral consequences of criminal convictions. The ABA Standards require defense lawyers to consider collateral consequences of conviction. Judges, accordingly, should monitor the performance of counsel. States chose to apply this rule in varying ways. *Strickland* encouraged but did not mandate consideration of collateral consequences. Some claim that structural incentives exist for lawyers to not elicit information relevant to collateral consequences

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because doing so may prolong a case; others note that no attorney or judge could predict any and all collateral consequences of a criminal conviction. Since Strickland did not require an analysis of collateral consequences, they generally are not regarded as cause to overturn criminal convictions. However, some argue that the Constitution should require consideration of collateral consequences. For example, in New York the consideration of collateral consequences is merely discretionary, while the elucidation of direct consequences is required. For instance, in *People v. Likewise*, the Kentucky Supreme Court in *Commonwealth v. After Padilla*, there has been significant litigation in the lower courts about whether attorneys are required to advise their criminal clients about other consequences of convictions. In , the Public Defender Service of the District of Columbia assembled a document outlining some collateral consequences. Department of the Justice. This project was initially supported by Award No. In Federal law, the federal sentencing guidelines have a model for collateral consequences which is determined by the date of when the offense was committed and by the type of the offense.

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Chapter 6 : What Are Collateral Consequences in a Criminal Case?

Collateral Consequences. A criminal conviction ends with sentencing that can include many different kinds of punishments. See *Sentencing* to learn more. A conviction also brings other consequences that affect your life in many other ways.

Or, When is a Punishment Not a Punishment? As everybody knows, when you are convicted of a crime you get a punishment. Your punishment can be a fine, jail time, or probation. But as everyone also knows, there are other consequences of being convicted of a crime that have nothing to do with the punishments that are on the books. If you are faced with a crime, you should be aware of these potential collateral consequences before you enter a plea. If you are representing yourself, the prosecutor is never going to discuss these with you, so they may come as a surprise once it is too late. A good reason to have a lawyer in a criminal case is that a defense attorney will consider collateral consequences in trying to shape a result for you. Most of the time, crimes have victims. When a person is a victim of a crime, something wrong has been done to them. In our society, when someone wrongs you, you are allowed to sue the person who wronged you for money damages. Very often, the committing of a criminal act also exposes the person to the potential for civil damages. When you plead guilty, that basically serves as an absolute admission for the purposes of a civil case as well. If you think you are facing a possible civil action arising out of criminal conduct, entering a no contest plea might help protect you somewhat, but you should explore the possible civil liability issues before entering any plea. The potential immigration consequences for a criminal conviction are vast and numerous. If you are not a natural-born United States citizen, you should seek an immigration opinion from an immigration attorney before entering any plea agreement. The immigration law is not consistent and very harsh. Even something as minor as a first offense possession of marijuana conviction could potentially lead to permanent exclusion from the United States. Despite repeated efforts by defense attorneys, being forced to register as a sex offender is considered a collateral consequence and not a punishment. This distinction takes on increasing dire consequences as every year both the state of Wisconsin and the Federal Government pass more laws to make sex offender registration required for more offenses and make the reporting and notification requirements even more onerous. This is a very confusing area. There are both Federal and Wisconsin requirements. The requirements are not consistent with one another. There is inadequate government implementation of both sets of requirements, so it is often difficult to register as a sex offender even if you are trying to do so. And, you can face criminal charges and prison time if you fail to register correctly. Moreover, offenses that once would not necessarily require a person to register are starting to be changed so that registration is mandatory. An example would be 4th degree sexual assault, which can be committed by touching someone on the buttocks in a bar over their clothes. In the past, it would be up to a judge whether the person who did that had to register. New federal law is changing that so probably that person is required to register for at least 15 years. Worse, the laws are retroactive, so the person who plead guilty to a 4th degree case in the past might now be required to register even though when he plead guilty he was told he did not have to. Most people know if you are convicted of a felony you lose your right to bear arms under Wisconsin law. Many people do not know that if you are convicted in a misdemeanor case involving domestic violence, you may also fall under Federal guidelines prohibiting firearm possession. The enforcement of this law is being stepped up. Now, even if you plead to a misdemeanor without a Domestic Violence label, the federal government will pull the criminal file and see if there was a domestic element to the offense. If there was, you would be denied the right to buy a gun. Even if it was just a disorderly conduct. If you are convicted of a felony, you lose your right to vote until you go through a separate legal procedure to have your civil rights restored. If you plead guilty to something, a future employer can look you up and see that you pled guilty. CCAP makes it very easy for people to look up what you have been convicted of, so it is important to consider that before deciding on taking a plea. This is just a list of the main ways that collateral consequences can impact you if you are involved in a criminal case.

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There may be others that are particular to your situation. If you are in the military or have a stock traders or other professional license, a criminal conviction can have even more significant consequence. There are situations where if you are a student you may not be able to get student loans anymore. There are many different ways that a criminal conviction can impact your life, and before you enter into a plea which requires you to be convicted of a crime, you should research and consider all of the possible collateral consequences, or talk to an attorney who can help you.

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Chapter 7 : NYC Criminal Defense Attorney Explains Felony Conviction Pardons in New York

Collateral consequences are legal and regulatory sanctions and restrictions that limit or prohibit people with criminal records from accessing employment, occupational licensing, housing, voting, education, and other opportunities.

Plea Agreements with Corporations By investigating allegations of wrongdoing and bringing charges where appropriate for criminal misconduct, the Department promotes critical public interests. These interests include, among other things: One of the most effective ways to combat corporate misconduct is by holding accountable all individuals who engage in wrongdoing. Prosecutors should focus on wrongdoing by individuals from the very beginning of any investigation of corporate misconduct. By focusing on building cases against individual wrongdoers, we accomplish multiple goals. First, we increase our ability to identify the full extent of corporate misconduct. Because a corporation only acts through individuals, investigating the conduct of individuals is the most efficient and effective way to determine the facts and the extent of any corporate misconduct. Second, a focus on individuals increases the likelihood that those with knowledge of the corporate misconduct will be identified and provide information about the individuals involved, at any level of an organization. Third, we maximize the likelihood that the final resolution will include charges against culpable individuals and not just the corporation. In carrying out this mission with the diligence and resolve necessary to vindicate the important public interests discussed above, prosecutors should be mindful of the common cause we share with responsible corporate leaders who seek to promote trust and confidence. Prosecutors should also be mindful that confidence in the Department is affected both by the results we achieve and by the real and perceived ways in which we achieve them. Thus, the manner in which we do our job as prosecutors—including the professionalism and civility we demonstrate, our willingness to secure the facts in a manner that encourages corporate compliance and self-regulation, and also our appreciation that corporate prosecutions can harm blameless investors, employees, and others—affects public perception of our mission. Federal prosecutors must maintain public confidence in the way in which we exercise our charging discretion. This endeavor requires the thoughtful analysis of all facts and circumstances presented in a given case. Corporations should not be treated leniently because of their artificial nature nor should they be subject to harsher treatment. Vigorous enforcement of the criminal laws against corporate wrongdoers, where appropriate, results in great benefits for law enforcement and the public, particularly in the area of white collar crime. Indicting corporations for wrongdoing enables the government to be a force for positive change of corporate culture, and a force to prevent, discover, and punish serious crimes. In all cases involving corporate wrongdoing, prosecutors should consider the factors discussed in these guidelines. For instance, corporations are likely to take immediate remedial steps when one is indicted for criminal misconduct that is pervasive throughout a particular industry, and thus an indictment can provide a unique opportunity for deterrence on a broad scale. In addition, a corporate indictment may result in specific deterrence by changing the culture of the indicted corporation and the behavior of its employees. Finally, certain crimes that carry with them a substantial risk of great public harm are. In certain instances, it may be appropriate to resolve a corporate criminal case by means other than indictment. Non-prosecution and deferred prosecution agreements, for example, occupy an important middle ground between declining prosecution and obtaining the conviction of a corporation. Prosecutors have substantial latitude in determining when, whom, how, and even whether to prosecute for violations of federal criminal law. In exercising that discretion, prosecutors should consider the following statements of principles that summarize the considerations they should weigh and the practices they should follow in discharging their prosecutorial responsibilities. Prosecutors should ensure that the general purposes of the criminal law—appropriate punishment for the defendant, deterrence of further criminal conduct by the defendant, deterrence of criminal conduct by others, protection of the public from dangerous and fraudulent conduct, rehabilitation, and restitution for victims—are adequately met, taking into account the special nature of the corporate "person. Prosecution of a corporation is not a substitute for the prosecution

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of criminally culpable individuals within or without the corporation. Because a corporation can act only through individuals, imposition of individual criminal liability may provide the strongest deterrent against future corporate wrongdoing. Provable individual culpability should be pursued, particularly if it relates to high-level corporate officers, even in the face of an offer of a corporate guilty plea or some other disposition of the charges against the corporation, including a deferred prosecution or non-prosecution agreement, or a civil resolution. In other words, regardless of the ultimate corporate disposition, a separate evaluation must be made with respect to potentially liable individuals. It is important early in the corporate investigation to identify the responsible individuals and determine the nature and extent of their misconduct. Every effort should be made to resolve a corporate matter within the statutorily allotted time, and tolling agreements should be the rare exception. In situations where it is anticipated that a tolling agreement is unavoidable, all efforts should be made either to prosecute culpable individuals before the limitations period expires or to preserve the ability to charge individuals by tolling the limitations period by agreement or court order. If an investigation of individual misconduct has not concluded by the time authorization is sought to resolve the case against the corporation, the prosecution authorization memorandum should include a discussion of the potentially liable individuals, a description of the current status of the investigation regarding their conduct and the investigative work that remains to be done, and, when warranted, an investigative plan to bring the matter to resolution prior to the end of any statute of limitations period. If a decision is made at the conclusion of the investigation to pursue charges or some other resolution with the corporation but not to bring criminal or civil charges against the individuals who committed the misconduct, the reasons for that determination must be memorialized and approved by the United States Attorney or Assistant Attorney General whose office handled the investigation, or their designees. In all cases involving wrongdoing by corporate agents, prosecutors should not limit their focus solely to individuals or the corporation, but should consider both as potential targets. Agents may act for mixed reasons—both for self-aggrandizement direct and indirect and for the benefit of the corporation, and a corporation may be held liable as long as one motivation of its agent is to benefit the corporation. See *United States v. Automated Medical Laboratories, Inc.* United States, F. Generally, prosecutors apply the same factors in determining whether to charge a corporation as they do with respect to individuals. Thus, the prosecutor must weigh all of the factors normally considered in the sound exercise of prosecutorial judgment: However, due to the nature of the corporate "person," some additional factors are present. In conducting an investigation, determining whether to bring charges, and negotiating plea or other agreements, prosecutors should consider the following factors in reaching a decision as to the proper treatment of a corporate target: The factors listed in this section are intended to be illustrative of those that should be evaluated and are not an exhaustive list of potentially relevant considerations. Some of these factors may not apply to specific cases, and in some cases one factor may override all others. For example, the nature and seriousness of the offense may be such as to warrant prosecution regardless of the other factors. In most cases, however, no single factor will be dispositive. In addition, national law enforcement policies in various enforcement areas may require that more or less weight be given to certain of these factors than to others. Of course, prosecutors must exercise their thoughtful and pragmatic judgment in applying and balancing these factors, so as to achieve a fair and just outcome and promote respect for the law. The nature and seriousness of the crime, including the risk of harm to the public from the criminal misconduct, are obviously primary factors in determining whether to charge a corporation. In addition, corporate conduct, particularly that of national and multi-national corporations, necessarily intersects with federal economic, tax, and criminal law enforcement policies. In applying these Principles, prosecutors must consider the practices and policies of the appropriate Division of the Department, and must comply with those policies to the extent required by the facts presented. In determining whether to charge a corporation, prosecutors should take into account federal law enforcement priorities as discussed above. In addition, however, prosecutors must be aware of the specific policy goals and incentive programs established by the respective Divisions and regulatory agencies. With this in mind, the Antitrust Division has established a firm policy, understood in the business community, that

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credit should not be given at the charging stage for a compliance program and that amnesty is available only to the first corporation to make full disclosure to the government. As another example, the Tax Division has a strong preference for prosecuting responsible individuals, rather than entities, for corporate tax offenses. Thus, in determining whether or not to charge a corporation, prosecutors must consult with the Criminal, Antitrust, Tax, Environmental and Natural Resources, and National Security Divisions, as appropriate. A corporation can only act through natural persons, and it is therefore held responsible for the acts of such persons fairly attributable to it. Charging a corporation for even minor misconduct may be appropriate where the wrongdoing was pervasive and was undertaken by a large number of employees, or by all the employees in a particular role within the corporation, or was condoned by upper management. There is, of course, a wide spectrum between these two extremes, and a prosecutor should exercise sound discretion in evaluating the pervasiveness of wrongdoing within a corporation. Of these factors, the most important is the role and conduct of management. Although acts of even low-level employees may result in criminal liability, a corporation is directed by its management and management is responsible for a corporate culture in which criminal conduct is either discouraged or tacitly encouraged. As stated in commentary to the Sentencing Guidelines: Pervasiveness [is] case specific and [will] depend on the number, and degree of responsibility, of individuals [with] substantial authority. Fewer individuals need to be involved for a finding of pervasiveness if those individuals exercised a relatively high degree of authority. Pervasiveness can occur either within an organization as a whole or within a unit of an organization. A corporation, like a natural person, is expected to learn from its mistakes. A history of similar misconduct may be probative of a corporate culture that encouraged, or at least condoned, such misdeeds, regardless of any compliance programs. Criminal prosecution of a corporation may be particularly appropriate where the corporation previously had been subject to non-criminal guidance, warnings, or sanctions, or previous criminal charges, and it either had not taken adequate action to prevent future unlawful conduct or had continued to engage in the misconduct in spite of the warnings or enforcement actions taken against it. The corporate structure itself e. Of course, the decision not to cooperate by a corporation or individual is not itself evidence of misconduct, at least where the lack of cooperation does not involve criminal misconduct or demonstrate consciousness of guilt e. Thus, failure to cooperate, in and of itself, does not support or require the filing of charges with respect to a corporation any more than with respect to an individual. In order for a company to receive any consideration for cooperation under this section, the company must identify all individuals involved in or responsible for the misconduct at issue, regardless of their position, status or seniority, and provide to the Department all facts relating to that misconduct. If a company seeking cooperation credit declines to learn of such facts or to provide the Department with complete factual information about the individuals involved, its cooperation will not be considered a mitigating factor under this section. Nor, if a company is prosecuted, will the Department support a cooperation-related reduction at sentencing. To be clear, a company is not required to waive its attorney-client privilege and attorney work product protection in order satisfy this threshold. The extent of the cooperation credit earned will depend on all the various factors that have traditionally applied in making this assessment e. In investigating wrongdoing by or within a corporation, a prosecutor may encounter several obstacles resulting from the nature of the corporation itself. It may be difficult to determine which individual took which action on behalf of the corporation. Lines of authority and responsibility may be shared among operating divisions or departments, and records and personnel may be spread throughout the United States or even among several countries. Where the criminal conduct continued over an extended period of time, the culpable or knowledgeable personnel may have been promoted, transferred, or fired, or they may have quit or retired. For example, it may not matter under the law which of several possible executives or leaders in a chain of command approved of or authorized criminal conduct; however, that information if known might bear on the propriety of a particular disposition short of indictment of the corporation. It may not be in the interest of a corporation or the government for a charging decision to be made in the absence of such information, which might occur if, for example, a statute of limitations were relevant and authorization by any one of the officials

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were enough to justify a charge under the law. For these reasons and more, cooperation can be a favorable course for both the government and the corporation. Cooperation benefits the government by allowing prosecutors and federal agents, for example, to avoid protracted delays, which compromise their ability to quickly uncover and address the full extent of widespread corporate crimes. With cooperation by the corporation, the government may be able to reduce tangible losses, limit damage to reputation, and preserve assets for restitution. In addition, cooperation may benefit the corporation by presenting it with the opportunity to earn credit for its efforts. The requirement that companies cooperate completely as to individuals does not mean that Department attorneys should wait for the company to deliver the information about individual wrongdoers and then merely accept what companies provide. To the contrary, Department attorneys should be proactively investigating individuals at every step of the process — before, during, and after any corporate cooperation. Department attorneys should vigorously review any information provided by companies and compare it to the results of their own investigation, in order to best ensure that the information provided is indeed complete and does not seek to minimize the behavior or role of any individual or group of individuals. Department attorneys should strive to obtain from the company as much information as possible about responsible individuals before resolving the corporate case. However, the Department does expect that, in such circumstances, the company will move in a timely fashion to conduct an appropriate investigation and provide timely factual updates to the Department. There may be circumstances where, despite its best efforts to conduct a thorough investigation, a company genuinely cannot get access to certain evidence or is actually prohibited from disclosing it to the government. Under such circumstances, the company seeking cooperation will bear the burden of explaining the restrictions it is facing to the prosecutor. The attorney-client privilege is one of the oldest and most sacrosanct privileges under the law. *United States, U.* As the Supreme Court has stated, "[i]ts purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.

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Chapter 8 : - Principles of Federal Prosecution Of Business Organizations | JM | Department of Justice

In celebration of the completion of the "National Inventory on the Collateral Consequences of Conviction", the ABA Criminal Justice Section hosted the "National Summit on Collateral Consequences" on Friday, February 27, in Washington, D.C.

It may be obtained from the sentencing court or from the Board of Parole. The Parole Board also has the authority to issue a certificate of good conduct CGC that will avoid various collateral consequences arising from conviction in New York and other jurisdictions. Relief A CRD is designed to ameliorate various mandatory forfeitures, disabilities and bars to employment resulting from a conviction. The term "forfeiture" refers to the loss of present rights. In contrast, the terms "disabilities" and "bars to employment" refer to impediments to future rights. These rights primarily concern employment and licensing. A CRD avoids only automatic as opposed to discretionary forfeitures and disabilities. The CRD will not preserve any right to retain or be eligible for public service. A CRD will not eliminate bars to employment that are not imposed solely as a result of the conviction, i. The granting of a CRD pursuant to Correction Law section is at the discretion of the sentencing court. A CRD is not a pardon and does not vitiate the conviction. A CRD is not necessarily a "certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted" as defined in Federal Rule of Evidence section c. That section provides that a certificate of rehabilitation will make evidence of a conviction inadmissible for impeachment purposes.

Automatic Forfeitures and Disabilities A variety of New York Statutes provide for mandatory forfeitures and disabilities resulting from conviction. What follows is a summary of examples, not a definitive list: Security guards and private investigators are ineligible for licensure if they have been convicted of a felony or certain specified offenses. Fiduciaries are ineligible if convicted of a felony. Junk dealers are ineligible for licensure if convicted of larceny, receiving stolen property or of violating Gen. A prospective juror is ineligible for duty if convicted of a felony. Certain liquor store employees are ineligible for employment if convicted of a felony or certain specified offenses. Persons convicted of a felony or certain specified offenses are ineligible for licensure as a Notary Public. Persons convicted of a felony or a serious offense are ineligible to obtain a firearm license. Felons are ineligible for license as real estate brokers or salesperson. Felons are ineligible to register for or vote, unless and until pardoned, restored to citizenship rights by the Governor, maximum sentence of imprisonment has expired, or parole discharge. For each client, then, the lawyer should determine what kind of licensure and employment the client has or anticipates seeking in the future. The laws governing such licensure and employment must be researched in order to identify restrictions that may have an impact on the client and which may possible be avoided by a post-conviction CRD.

Discretionary Forfeitures and Disabilities Although a CRD does not, by itself, avoid discretionary forfeitures and disabilities, it does establish a presumption of rehabilitation that limits unfair discrimination arising from conviction. Correction Law Article A does not apply to prospective employment as a member of a law enforcement agency. Such discrimination alleged against a private employer may be challenged under the Human Rights Law. However, these amendments expressly provide that a CRD, along with other documentation, may avoid permanent disqualification from operating certain "special vehicles".

Weapons and Firearms A CRD may relieve the offender of the statutory bar to application for or receipt of a pistol license and the bar to possession of long or short weapons, arising from the conviction of a felony or serious offense, but it will not avoid the exercise of discretion in licensing. The unfair discrimination statute does not apply to firearm licensing.

Advocacy and Judicial Discretion The optimum circumstances for obtaining a CRD is when the crime is perceived to have been relatively minor by classification or because of extenuating or mitigating circumstances and when the application is made upon proof of rehabilitation. The statute does not require rehabilitation as a predicate to relief. Rather, it provides a two-prong criteria: For post-sentence applications, counsel may establish the potential for or attainment of rehabilitation by a showing successful completion of probation or compliance

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with conditions imposed on the client at sentencing. Vacancy or Reversal Non-Elected officials may apply for a CRD upon reversal or vacancy of a conviction of a felony or other crime involving a violation of oath of office. At the discretion of the appointing authority, the official may be awarded full or partial salary for the period of the vacancy. Pardon A pardon is another means to ameliorate collateral consequences for a client. It is the oldest method of relief from disabilities and is reserved for extraordinary cases involving issues of innocence or manifestly unjust dispositions. An absolute pardon restores civil rights but does not annul the conviction. Unless granted on the ground of innocence, a pardon does not automatically discretionary prejudice to the client in cases involving prospective employers or licensing authorities. A pardon does not preclude inquiry into character and fitness, and does not preclude administrative discipline. The attorney must identify and evaluate such collateral consequences so that he or she may advise the client accordingly, avoid or ameliorate such consequences where practicable, and possibly exploit them in conducting plea negotiations or at sentencing. Civil Disabilities If you or your business were convicted of a crime and need relief from the resulting legal disabilities, we can help. Please complete our simple and secure forms to initiate the process.

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Chapter 9 : Minnesota Criminal Sexual Conduct Attorney | Lundgren & Johnson, PSC

STRATEGIES FOR AVOIDING OR AMELIORATING THE COLLATERAL CONSEQUENCES OF CRIMINAL CONDUCT *My thanks to Glenn Murray and the New York State Bar Association for their input.

By that number rose to number 5. The Department of Justice estimates that if the imprisonment rate remains unchanged, 6. In addition to those who have served prison time, an even larger proportion of the population has been convicted of a criminal offense without going to prison. Concern about the impact of collateral consequences has grown in recent years as the numbers and complexity of these consequences have mushroomed and the U. Collateral consequences are the legal disabilities that attach as an operation of law when an individual is convicted of a crime but are not part of the sentence for the crime. Examples of collateral consequences include the denial of government issued licenses or permits, ineligibility for public services and public programs, and the elimination or impairment of civil rights. There is a real concern on a societal level that collateral consequences may impose such harsh burdens on convicted persons that they will be unable to reintegrate into society. Indeed, the judge and lawyers in the case are frequently unaware of collateral consequences that will predictably have a substantial impact upon a defendant. Few jurisdictions provide a reliable way of avoiding or mitigating categorical restrictions based solely on conviction even years after the fact. Fewer still give decision-makers useful guidance in applying discretionary disqualifications on a case-by-case basis, or a measure of protection against liability. Jurisdictions are frequently at a loss about the effect to give relief granted by other jurisdictions. The Uniform Collateral Consequences of Conviction Act, promulgated by the Uniform Law Commission in , is an effort to improve public and individual understanding of the nature of this problem and to provide modest means by which people who suffer from these disabilities may, in appropriate circumstances, gain partial relief from those disabilities. The key provisions of the UCCA are: Collection All collateral consequences contained in state laws and regulations, and provisions for avoiding or mitigating them, must be collected in a single document. The compilation must include both collateral sanctions automatic bars and disqualifications discretionary penalties. In fulfilling their obligations under the Uniform Act, jurisdictions will be assisted by the federally-financed effort to compile collateral consequences for each jurisdiction that was authorized by the Court Security Act of Notification Defendants must be notified about collateral consequences at important points in a criminal case: At or before formal notification of charges, so a defendant can make an informed decision about how to proceed; and at sentencing and when leaving custody, so that a defendant can comport his or her conduct to the law. Given that collateral consequences will have been collected in a single document, it will not be difficult to make this information available. The Supreme Court decision in Padilla v. Kentucky has significantly raised the profile of the problem of collateral consequences with the public and the bar. Section 5 of the Act instructs trial courts to confirm that the defendant has received and understood notice of collateral consequences and had an opportunity to discuss them with defense counsel. The UCCCA facilitates notification of collateral consequences before, during, and after sentencing and aids courts and lawyers in providing the defendant with a constitutionally adequate defense. Authorization Collateral sanctions may not be imposed by ordinance, policy or rule, but must be authorized by statute. An ambiguous law will be considered as authorizing only discretionary case-by-case disqualification. Overturned and Pardoned Convictions; Relief Granted by Other Jurisdictions Convictions that have been overturned or pardoned, including convictions from other jurisdictions, may not be the basis for imposing collateral consequences. Charges dismissed pursuant to deferred prosecution or diversion programs will not be considered a conviction for purposes of imposing collateral consequences. The Act gives jurisdictions a choice about whether to give effect to other types of relief granted by other jurisdictions based on rehabilitation or good behavior, such as expungement or set-aside. Relief from Collateral Consequences The Act creates two different forms of relief, one to be available as early as sentencing to facilitate reentry Order of Limited Relief and the other after a period of

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law-abiding conduct Certificate of Restoration of Rights.