

# Criminal Defense Newsletter

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## The Civil – Criminal Connection:

### Civil Consequences of Criminal Convictions for Low-Income Defendants

Saginaw's Center for Civil Justice provides us with this helpful overview of how criminal convictions carry civil consequences. Thanks not only to the authors, listed below, but also to the CJC's Terri Stangl, who suggested the article.

The Editor.

Funding criteria for virtually every civil legal services or legal aid program prevent legal aid attorneys and advocates from providing representation to indigent persons in criminal matters. However, civil legal services providers often are asked about mitigating the civil effects of criminal pleas or convictions. In addition, civil legal services providers from time to time encounter clients who have been convicted of fraud in cases in which it appears that counsel and the court were unfamiliar with the realities of the public assistance system.

Particularly in the wake of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the federal "welfare reform" statute, criminal convictions may result in serious penalties under many public assistance programs, and may directly impact the assistance available to the convicted person's family members. In addition, the so-called "war on drugs" has resulted in a proliferation of laws and regulations that impose civil punishment not only on persons convicted of possession or sale of illegal drugs, but also in some instances on their friends or family. These laws affect eligibility for housing, education, nutrition, and cash assistance programs.

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Many criminal defendants are low income at the time they are charged with crimes and may be receiving public assistance or living in subsidized housing at the time they are convicted. Many others face difficulty in obtaining employment as a result of criminal convictions, at which point they may need to rely on the "safety net" of public assistance programs and federally subsidized housing programs. This article provides some basic information about the civil consequences of a conviction in the context of government-funded assistance programs. This information can be shared with criminal defendants, who need to be aware that convictions or pleas may have serious civil, as well as criminal, consequences.

In addition, many criminal defense attorneys are unfamiliar with the public assistance programs that affect low income clients and thus may be ill-prepared to defend clients accused of fraud in the receipt of public assistance. Section D of this article highlights the types of issues that defense counsel may want to discuss with a local legal services or legal aid program when evaluating and preparing a client's defense in a fraud case.

#### **A. Direct Effects of Welfare Fraud Convictions on Public Assistance**

The consequences of a welfare fraud conviction on a defendant's ability to secure or keep public assistance will depend on both the nature of the "fraud," the amount of money that is involved, and the type of "welfare" program involved. It also may depend on whether the defendant has ever been disqualified for fraud in the past. Disqualification of the offender affects not only the offender, but in many cases, disqualification affects the offender's family or household. Federal and state public assistance laws impose serious, long-term consequences on individuals with convictions related to welfare fraud, with disqualification periods from assistance lasting one year to a lifetime. This underscores the importance of informing defendants about the consequences of pleading to one type of crime (and the amount of assistance involved in that crime) versus another type of crime.

The adverse consequences of an offender's fraud conviction on his or her family is illustrated by the example of an offender who is living with his or her family. During the period that the offender is disqualified, FIA must count the disqualified person's income, if any, when calculating Food Stamp eligibility for certain family members living in the same household; namely, his or her spouse, children under age 22, and unmarried parents of these children. This formula results in lower Food Stamps for these family

members, whether or not they knew about or were present when the fraud was committed. In addition, the assistance of remaining household members may be reduced in order to recoup the amount of assistance that was fraudulently obtained. The consequences of different types of pleas or convictions are summarized below.

#### **1. Fraudulent Misrepresentations or Intentional Failures to Disclose Information**

- a) Making a fraudulent representation regarding place of residence for the purpose of receiving Food Stamps, Medicaid, Supplemental Security Income (SSI), Family Independence Program (FIP) or other Temporary Assistance for Needy Families (TANF) assistance simultaneously in two or more states.

**Consequences:** 10-year disqualification from receiving FIP (or TANF cash assistance in another state). Note that the individual is disqualified from receiving FIP/TANF even if the benefit that was unlawfully obtained was not FIP/TANF. Also results in a 10-year disqualification from receiving SSI.

**Authority:** 42 USC 608(a)(8) and 1382(e)(4)(A); PEM Item 203.

- b) Making a fraudulent representation regarding identity or place of residence for the purpose of receiving multiple Food Stamp benefits simultaneously.

**Consequences:** 10-year disqualification from receiving Food Stamps.

**Authority:** 7 USC 2015(j); PEM Item 203.

- c) Intentionally misrepresenting or failing to disclose information (such as income, family composition, etc.) for the purpose of obtaining Family Independence Program (FIP), Food Stamps, or State Disability Assistance (SDA) to which the individual is not entitled

**Consequences:** Disqualification from receiving the type of assistance that was wrongfully obtained. For example, fraudulently obtaining Food Stamps will not

result in disqualification from receiving SDA). In determining the length of disqualification, the agency will consider not only disqualifications that resulted from prior criminal convictions, but also disqualifications resulting from Family Independence Agency administrative disqualification hearing decisions and from "voluntary" disqualification agreements. However, the previous disqualification must have been a disqualification from the same benefits or program (for example, a prior FIP disqualification will not count in determining the length of a Food Stamp disqualification).

First disqualification (no previous disqualifications):  
One-year disqualification.

Second disqualification (from the type of benefit/program at issue): Two-year disqualification.

Third disqualification: Lifetime disqualification.

Note: For Food Stamps, the court may order a shorter disqualification or may specifically order that no disqualification should occur. FIA must follow the court order. Defense counsel should consider the possibility of obtaining a court order for a shorter (or no) disqualification period when the circumstances of the case are sympathetic or when a plea is being negotiated.

Authority: 7 USC 2015(b)(1)(i), (ii)(I), and (iii)(I); Mich. Admin Code Rules 400.3130 and .3178; PEM Item 720.

## 2. Food Stamp "Trafficking" Convictions

As discussed in the section on welfare fraud, above, disqualification of the offender may reduce the amount of assistance paid to remaining family or household members.

- a) Fraudulently using, transferring, altering, or acquiring Food Stamp coupons, authorization cards, or access devices, or
- b) Redeeming or presenting for payment coupons known to have been fraudulently obtained or transferred.

### Consequences:

If over \$500: Lifetime disqualification from receiving Food Stamps.

If under \$500: One-year disqualification from receiving Food Stamps for first disqualification.

Two-year disqualification from receiving Food Stamps for second disqualification.

Lifetime disqualification from receiving Food Stamps for third disqualification.

Note: When determining whether previous disqualifications have occurred, the Family Independence Agency will consider Food Stamp disqualifications resulting from administrative disqualification hearing decisions and voluntary disqualification agreements, as well as from previous criminal convictions.

Authority: 7 USC 2015(b)(1)(i), (ii)(I), and (iii)(I) & (IV); PEM Item 203, PEM Item 720.

- c) Trading Food Stamps to Acquire Firearms, Ammunition, or Explosives.

Consequences: Lifetime disqualification from receiving Food Stamps.

Authority: 7 USC 2015(b)(1)(iii)(III); PEM Item 230.

- d) Trading Food Stamps to Acquire Illegal Drugs

Consequences: First conviction: two years disqualification from receiving Food Stamps.

Second conviction: lifetime disqualification from receiving Food Stamps.

Authority: 7 USC 2015(b) (1)(ii)(II) and (iii)(II); PEM Item 230.

## **B. Direct Effects of Criminal Convictions on Government Assistance and Subsidized Housing**

Criminal convictions have serious implications for low income persons who receive or who may need help from the government, in the form cash assistance, Food Stamps, health care, educational assistance. Criminal convictions can also have adverse affects on an individual's ability to retain or apply for federally subsidized housing. Subsidized housing is a scarce and important resource for many low income families, who could not otherwise afford safe and decent housing. Some types of rental subsidies are "project-based," that is, available to anyone who lives in the apartment complex. Others, such as Section 8 vouchers or certificates, are "tenant-based," and can be used in any rental dwelling that meets HUD's occupancy requirements.

Certain types of criminal convictions mandate an eviction from a federally subsidized residence. The same criminal convictions may keep low-income people from being approved for assisted housing in the future. The local Public Housing Authorities (PHAs) that administer these programs have become more aggressive in their treatment of criminal convictions. This stems in part from a growing concern for the safety and comfort of residents in federally subsidized housing. Unfortunately, although this is a commendable goal, innocent individuals frequently are harmed by these strict regulations.

Commonly, low-income persons seek help from civil legal services providers in defending against an eviction that has been brought because the tenant (or someone associated with them) has been found guilty of a crime. Federally-funded legal services programs, due to funding restrictions, are limited in their ability to defend tenants against drug-conviction-related evictions. Even if the eviction is for a crime unrelated to drugs or if the legal services provider does not receive federal funding, legal service advocates are at a disadvantage if they are consulted after conclusion of the criminal case. Once the criminal matter has been resolved through a trial or a plea agreement, the tenant may be effectively barred from contesting the basis for eviction or denial of subsidized housing assistance.

This section will look at first look at several categories of drug-related criminal offenses, and how a conviction for each kind of offense can have a direct effect on the defendant's ability to receive public assistance, federally-subsidized housing, and educational assistance. Then there will be a brief discussion on how convictions for "violent" and "other" crimes can impact a defendant's ability to

retain or obtain federally-subsidized housing in the future.

### **1. Drug-related criminal convictions**

- a) Crimes involving the selling, distribution, or possession of illegal drugs or other crimes committed while under the influence of illegal drugs.

**Consequences:** Termination of federally subsidized housing benefits (involving both Public Housing and Section 8 assisted housing).

If a tenant, a member of the tenant's household, any guest, or person under the tenant's control is convicted of a drug-related crime, the tenant's entire family may have its housing benefits terminated. This includes eviction in the case of public housing and termination of subsidies with Section 8 recipients. This is so even if the crime occurred off the premises and even if the tenant had no knowledge of the activity.

When the PHA learns that there has been a criminal conviction, it will either begin eviction proceedings or terminate the rental subsidy. The tenants will be given a hearing, where they will be given a chance to dispute the facts and defend themselves with the help of an advocate. However, findings and admissions made in their criminal case may prevent the household from effectively challenging the termination. Entire families have been evicted for the criminal activity of a single person.

**Consequences:** Denial of Section 8 Rent Assistance and Denial of Admission to Public Housing.

Drug-related criminal convictions can also affect whether the offender will be accepted as a new tenant in a federally-subsidized housing program. Current law requires the Public Housing Authority to reject a family's application for public housing or section 8 if any member of the family has been evicted from federally assisted housing in the past for a crime relating to drugs.

A family also may be denied federal housing assistance if a member of the household has been evicted for a serious lease violation while living in federally-subsidized housing in the past. There is no time limit on how far back the Public Housing Authority may look to see whether a serious lease

violation may have occurred. The serious lease violations provision includes not only drug-related crimes, but also remains broad enough to include other offenses as well.

- b) Felony use, possession, or distribution of controlled substances with a conviction after August 22, 1996

Consequences: FIP and Food Stamps Assistance Must Be Paid to a Third Party.

Federal Law allows states the options of disqualifying those convicted of a felony from receiving cash assistance or Food Stamps. See 21 USC 862a. Michigan, fortunately, has rejected that option, see Public Act No. 294 of 2000, Section 619. No disqualification is applied, but FIP will be paid to a third party payee, rather than to the convicted felon, and Food Stamps will be paid to an authorized representative, under Michigan law and policy.

In states other than Michigan, the ex-offender may be disqualified from receiving Food Stamps and TANF-funded cash assistance.

- c) Any federal or state offense involving possession of a controlled substance.

Consequences: Disqualification from receiving Federal Student Financial Aid, including loans, grants, work-study, etc.

First offense: One-year ineligibility.

Second offense: Two-year ineligibility.

Third offense: Indefinite ineligibility.

As discussed above, persons convicted of crimes may face discrimination when seeking employment. In addition, they may have few marketable skills. Pursuing education and training at through a local community college or university may in some cases be an individual's best means of overcoming the stigma of a criminal conviction. However, these penalties may prevent or delay an individual from attending post-secondary education by withholding needed financial support.

Defense attorneys should be aware that funding for some types of training and education might still be

available to their clients through their local Michigan Works Agency, which administers the Workforce Investment Act (WIA). Under WIA, Michigan Works Agencies have a limited amount of funding available to provide "individual training accounts" which may help persons with criminal convictions attend job training or education.

- d) Any federal or state offense involving sale of a controlled substance.

Consequences: Disqualification from receiving Federal Student Financial Aid, including loans, grants, work-study, etc.

First offense: Two-year ineligibility.

Second offense: Indefinite ineligibility.

See the discussion in prior section.

- e) Trading Food Stamps to Acquire Illegal Drugs.

See section 2(d), above.

## 2. Violent crimes

This broad category includes crimes involving or resulting in violence. Domestic violence is an example of a violent crime.

Consequences: Denial of federally-assisted housing benefits including both the Public Housing and Section 8 programs.

PHAs may deny public housing or Section 8 program benefits to tenants if they or a member of their family has a criminal record including a violent crime committed within a "reasonable" time before they seek admission. There is no discussion of how far back a "reasonable" time extends. Also, there is no definitive discussion of what a "violent" crime includes. This is discretionary for the PHAs, depending on the facts of the particular case.

Consequences: Termination of ongoing federal housing assistance including both Public Housing and Section 8 programs.

Regulations require that PHAs use leases which contractually mandate the termination of benefits to tenants that partake in any criminal activity that threatens

the health, safety, or right to peaceful enjoyment of the premises by other tenants. This permits them to terminate ongoing benefits if a member of the household is convicted of a violent crime that threatens the other tenants. Tenants and private landlords who provide housing for Section 8 recipients are required to enter into a similar contract. Private landlords that do not take action to remove persons who have endangered other tenants may be disqualified from future participation in the Section 8 program. This can give landlords an incentive to evict tenants who have engaged in violent criminal activities.

### **3. Lease violations and other crimes**

#### **a) Serious Lease Violations.**

**Consequences:** Denial or termination of housing assistance for a family evicted for a serious violation of the lease.

Federal regulations now require PHAs to reject applicants for Section 8 vouchers who have been evicted for serious lease violations from housing assisted under the United States Housing Act. The PHA may look back to violations that occurred within a "reasonable" time prior to the application, with "reasonable" being defined by each PHA. This may eventually be extended, however, to other types of subsidized housing programs under the final HUD regulations that will be published implementing the so-called "one-strike" rule. In addition, for Section 8, the regulations require PHAs to terminate the subsidy of any participant that has been evicted for a serious lease violation. This blanket rule was originally intended to protect residents from activity by other tenants that adversely affect their safety. However, it is so broadly written that it could result in the exclusion of not only those previously evicted for serious criminal activity, but also to Section 8 voucher applicants who were evicted for minor but "serious" lease violations.

#### **b) "Other" Crimes.**

**Consequences:** Denial and termination of federal housing benefits for tenants that have criminal records involving "other" criminal activity.

The federal public housing law permits PHAs to deny federally assisted housing to households if a member of the household has a criminal record involving any "other" criminal activity. See 42 USC 13661. "Other" refers to a crime other than a violent, or drug-related crime, that would adversely affect the health, safety, or

right to peaceful enjoyment of the premises, if the criminal activity occurred a "reasonable" time before the person seeks admission. Not only is the category silent on what is a "reasonable" time, it is also silent on the particular types of crimes it references. This is a largely discretionary provision which is open to a wide range of interpretations by PHAs. Any denial of benefits under this category would be highly dependent on the facts related to the crime, and the rehabilitation demonstrated since that time. This category could be highly susceptible to misuse or abuse.

### **C. Indirect Effects of Criminal Convictions on Employment and Assistance**

Even if they are not denied governmental assistance directly, ex-offenders may find that their criminal records can make it more difficult for them to become productive members of society. For example, they may be barred from many types of employment. In turn, the inability to obtain or maintain employment may also prevent the individual and his or her family from receiving assistance under some needs-based public assistance programs with their stringent work requirements and time limits. This section will review how certain types of convictions may (and in some cases, will) affect employment and public assistance.

#### **1. Adverse impact on employment**

Clients should be forewarned that certain criminal convictions would have a direct, adverse impact on their ability to obtain certain types of employment. For example, a person whose name will be placed on the Central Registry as a person with a substantiated history of child neglect or abuse cannot be employed in a licensed or registered child day care center or home, and cannot receive FIA-funded Child Day Care payments for providing child care to others.

In other cases, employers may refuse to hire individuals for certain types of employment because of the nature of the crime involved and the requirements of the specific job. Expungement may be a useful tool if a client falls within the limited parameters of Michigan's expungement law. Several Legal Services organizations in Michigan, and/or pro bono attorneys who cooperate with these programs, may be available to handle expungement cases.

#### **2. Employment-related requirements of public assistance programs**

Because a criminal conviction often has a direct negative impact on a person's employability, it may have a significant indirect effect on the individual's

eligibility for public assistance. Increasingly, public assistance programs require individuals to engage in employment or employment-related activities, and limit the length of time that an individual may receive assistance. As a result, indirect, adverse effects of a criminal conviction may be significant.

The details of employment-related requirements of public assistance programs are beyond the scope of this article, but the summary below may be helpful to criminal law practitioners who are advising their clients.

a) **Three-Month Limit on Food Stamps for Unemployed Persons with No Child in Their Household.**

Food Stamp recipients who work less than 20 hours a week may receive only three months of Food Stamps in a three-year period, unless they can show that they are exempt from the time limit or that the month in which they received Food Stamps does not count toward the three month limit.

**Who Is Exempt from the 3 Month Limit?**

A person is exempt from the 3 month limit if s/he:

- Lives in a Food Stamp household that includes a child (this does NOT have to be the child of the unemployed person)
- Is age 50 or older (or under age 18)
- Cannot work due to mental or physical problems
- Is pregnant
- Is receiving or applying for unemployment compensation
- Participates regularly in substance abuse (drug or alcohol) treatment program
- Cares for someone who is incapacitated
- Is escaping domestic violence (exemption available for up to 6 months)

**When Is a Month of Food Stamps Not Counted Toward the 3-Month Limit?**

A month of Food Stamps does not count toward the 3-month limit if the Food Stamp recipient is:

- Working 20 hours a week
- Doing community service /volunteer work for enough hours to "work off" the Food Stamps s/he receives

- Participating in a Food Stamp Employment and Training Program through the local Michigan Works Agency (FIA should provide referrals as needed)
- Participating in JTPA or Michigan Rehabilitation Services work program

Persons convicted of a crime may have difficulty meeting the work requirement or finding a non-profit or public agency that will provide them an opportunity to "work off" their Food Stamps through volunteer work. It may be important for these individuals to know that they can avoid losing Food Stamps eligibility by, for example, participating in some types of education or in substance abuse treatment.

b) **Five-Year Limit on Federally Funded Cash Assistance to Families Under TANF.**

Federal law prohibits families from receiving cash assistance funded by the Temporary Assistance to Needy Families (TANF) block grant for more than 60 months (5 years) in a lifetime, regardless of how much or little a family may receive within a given month. 42 USC 608(a)(7). In Michigan, the TANF-funded assistance program is known as FIP (Family Independence Program). Although the Michigan legislature has chosen not to apply a five-year limit to FIP cash assistance in Michigan (thus ensuring that state-funded FIP will be available to those who have exhausted their five years of federally-funded FIP), individuals who apply for TANF assistance in another state may find they are ineligible for assistance if they have "used up" their five years of federally-funded assistance in Michigan. Some states deny assistance if a family has received as few as 24 months of TANF-funded assistance since 1996. Individuals with barriers to work who are also ineligible for public assistance may be forced to engage in illegal activities or find themselves completely destitute.

c) **Work First Requirements and Food Stamp Employment and Training Requirements.**

In general, able-bodied parents must attend job search classes and look for work in order to qualify for the cash assistance program (FIP). If they also receive Food Stamps, the Work First requirements will apply to their Food Stamp eligibility as well. The goal of the Work First program is to ensure that all parents are working (or engaging in work-related activity) at least 30 hours per week (20 for single parents with a child under age 6; 35 or 55 for two-parent families, depending on whether they receive child day care assistance).

Sometimes Work First case managers assume that a parent is not "complying" with Work First job search requirements if he or she is unable to find work within a certain amount of time. Persons who are unable to find a job because of a criminal history may encounter allegations of "noncompliance" and may be threatened with penalties against their cash assistance and Food Stamps.

#### ***D. Defending Clients Accused of Intentional Program Violations or Fraud***

There are a number of factors that make it important for criminal defense attorneys to work with legal advocates who specialize in public benefits programs on the civil side when evaluating cases in which a person is charged with fraud. Most legal services offices or programs have legal advocates with expertise in the statutes, regulations, and policies that govern public assistance programs. In addition, many have extensive knowledge of the local FIA offices and personnel.

A discussion of the factors that may be important to your case follows.

##### ***1. FIA understaffing***

Incentives for FIA workers to take early retirement, combined with hiring freezes, have resulted in serious understaffing in most FIA offices. As a result, caseworkers have high caseloads and may have insufficient time to keep up with policy changes, accurately advise clients about their responsibilities, maintain complete and accurate records, and research policy when determining or re-determining eligibility or benefit amounts. This makes it more likely that an overpayment is the result of agency errors or failure to report client reports, rather than a deliberate attempt by the client to receive more benefits.

##### ***2. Complex and confusing policies***

The rules or policies on determining eligibility and calculating benefit amounts for the various public assistance programs are detailed, complex, and constantly changing.

Each program has different rules on income, assets, and calculating eligibility and benefit amounts. Thus, for example, expenses such as rent and utilities will be considered for determining Food Stamps but not for FIP cash assistance or Medicaid. In addition, there are different definitions of the "family" or "household" group for different programs. Thus, for example, a sibling's income may count when

determining a child's eligibility for Food Stamps, but not for Medicaid.

Even more confusing is the fact that there are dozens of categories of Medicaid with different eligibility rules, as well as several different categories of Food Stamps with different rules. Thus, for example, assets are not considered at all in calculating eligibility for some types of Medicaid, while only "cash assets" (such as bank accounts, stocks, and bonds) are counted for another group of Medicaid categories. Eligibility for yet a third group of Medicaid categories depends on both cash and non-cash assets.

Given the complexity of these rules, it is easy for caseworkers and clients alike to make mistakes. For example, a client may be advised by a caseworker that a particular type of asset is not "countable" and thus need not be reported, only to be accused later of fraud for not disclosing the existence of the asset.

It also is difficult for clients to know whether a particular piece of information must be reported to the FIA. For example, FIA policy currently requires a client to report a "change in work hours of more than 5 hours per week that is expected to continue for more than one month." Try figuring out what must be reported, and when, if you are a part-time employee with fluctuating hours and schedules!

Finally, given the complexity of the rules, it is nearly impossible for clients to predict how changes in income or expenses of a household member should affect the client's eligibility for and amount of assistance in the future. Accordingly, a client who has mailed in verification of a change in income and expenses may not realize that the verification was not received and considered by the caseworker.

All of these factors may have a bearing on whether the prosecutor will be able to prove both that the defendant intentionally failed to report information and that the defendant did so with fraudulent intent (that is, for the purpose of receiving assistance to which he or she was not entitled). If a defense attorney can show that even the client's caseworker does not have a complete or accurate understanding of the reporting rules, it may be easier for a jury to conclude that the defendant was merely confused, rather than intending to commit fraud.

Many legal services and legal aid offices have advocates who specialize in public benefits programs. Civil legal services advocates may be able to help you identify the policies or rules that are at issue in the case, and assess whether the caseworker or the defendant simply made an honest mistake.



### 3. Poor record-keeping

Many FIA offices or individual caseworkers have poor record-keeping habits. Your local legal aid or legal services advocates may be able to assist you in evaluating the policies and practices of the particular office or caseworker involved in a criminal case.

There is no statewide expectation that all FIA caseworker conversations with a client will be recorded in the client's file at FIA. Many FIA offices do not require case workers to document telephone calls, or messages left on voice mail or answering machines. This makes it very difficult for either the client or caseworker to verify whether or not a client in fact spoke with a caseworker to report a change in income or circumstances. In other offices, however, there may be a telephone message book with carbon copied records of all messages. And, some caseworkers are meticulous about documenting conversations with clients.

Some FIA offices refuse to allow clients to drop off papers for their caseworker and insist that the information be mailed or that the client arrange an appointment with the caseworker at which the papers can be hand-delivered. Other offices, however, have log books for clients to note that a document has been dropped off. Still others may provide a date-stamped copy of the document that was dropped off, or a receipt for the document.

As you would expect in an understaffed, paper-intensive system, papers often are misplaced at FIA offices. This frequently results in a "swearing match" between the client and the caseworker about whether particular information was submitted.

Your local legal aid or legal services office may be able to help you understand and evaluate the record-keeping practices of your local office, and assist you in showing that information was in fact reported, or that the FIA office does not maintain reliable records.

### E. Using this information when Counseling and Representing Clients

#### 1. Defendants charged with drug-related or violent crimes

Find out if the defendant has been living in subsidized housing. Be sure that the defendant is aware that a conviction may result in eviction from subsidized (public or section 8) housing for both the defendant and his or her entire household. Refer the client to the local legal services or legal aid office as soon as you become aware that eviction is a possibility. Although federally funded programs cannot defend

drug-related evictions or provide criminal representation, they may provide information prior to the filing of an eviction action, and they may be able to assist the tenant in getting pro bono representation.

Find out if the crime occurred while the defendant was in or near the residence of a friend or relative who has subsidized housing. Defendants should be informed that criminal acts that occur while they are guests in a subsidized housing unit or complex (if proven at trial or through a plea) may result in eviction of friends and relatives that live in the subsidized housing. Facts that are admitted or proven in the criminal case may adversely impact the defendant's friends or relatives. Defendants may not want to unnecessarily jeopardize a friend or relative's ability to stay in subsidized housing.

Consult with attorneys that specialize in subsidized housing issues as needed. Legal aid or legal services providers, or attorneys that do pro bono work with legal services programs related to subsidized housing, can provide more detailed information about the current state of the law regarding criminal convictions or conduct and subsidized housing. Although federally-funded programs may be limited by funding restrictions on the extent to which they can defend drug-related evictions, they may provide the PHA with information prior to the filing of an eviction action, and they may be able to assist the tenant in getting representation from a pro bono attorney or non-federally funded organization.

Find out if the defendant receives Food Stamps or FIP cash assistance. Be sure that the defendant understands that he or she will not be able to receive Food Stamps or FIP directly if convicted of a felony possession or distribution charge. Be sure that the defendant also understands that he or she may be disqualified from receiving Food Stamps or cash assistance in states other than Michigan.

Find out if the defendant receives student financial aid or hopes to attend post-secondary education or training. Be sure that the defendant understands that drug-related convictions may make them temporarily or permanently ineligible for federal financial aid, including loans, grants, and work-study.

#### 2. Defendants charged with welfare fraud, trafficking, or other benefits-related crimes

Find out about prior convictions or disqualifications. Increasing penalties may be based on voluntary disqualification agreements, not just on criminal convictions.

Be sure the defendant understands the benefits disqualifications that will be imposed if he or she is convicted, and that benefits to his or her family will be affected as well. Defendants may not realize that a disqualified person's income will be counted in determining benefits for other family members in the household. They also may not realize that benefits to other members of the household may be reduced to recover amounts that were fraudulently obtained.

Consult with legal services or legal aid advocates who specialize in public assistance programs, and refer defendants to legal services or legal aid for advice, as necessary. See section C, above, for more details.

*Written by Jacqueline Doig, Staff Attorney, and Ian Simons, Law Clerk, Center for Civil Justice, Saginaw, Michigan. The Center for Civil Justice is a non-profit law firm that provides civil legal services to low income persons, with emphasis given to significant and policy advocacy that cannot be provided by funded legal services providers in its 10-county service area, and to Food Stamp advocacy throughout the state. For more information, see [www.mlan.net/ccj](http://www.mlan.net/ccj) or e-mail [info@ccj-mi.org](mailto:info@ccj-mi.org). The Center's advocates have extensive experience working with many kinds of governmental assistance programs. Technical assistance on the sections related to governmental housing programs was provided by Jim Schaafsma, of the Michigan Poverty Law Program.*

### Endnotes

1. For example, a family of 4 will only receive assistance for a family of 3 if one person in the household is disqualified because of a fraud conviction or disqualification agreement.
2. Clients frequently are persuaded or coerced into voluntarily disqualifying themselves from receiving benefits before an administrative hearing is held and before the case is referred to the prosecutor.
3. See "One Strike and You're Out" (Mar. 1996) HUD Notice PIH 96-16 (April 12, 1996).
4. See 42 USC 13661 and 42 USC 1437d. These sections require PHAs to use leases that require termination of tenancies for certain criminal activity, including drug-related convictions.
5. See *Ann Arbor Housing Commission v Wells*, 240 Mich App 610 (2000). See also *Willock v Schenectady Municipal House Auth.*, \_\_\_NYS 2d\_\_\_ (NY App 3d 2000) [a public housing resident in whose apartment housing inspectors found drug items was evicted even

though the items belonged to the guest of the resident, and the resident had no knowledge of them].

6. Housing advocates are beginning to argue that punishing innocent family members for the actions of a former household member is unconstitutional. These cases are working their way through courts in many states. For more information on the status of this legal argument, contact Jim Schaafsma at the Michigan Poverty Law Project, [jschaafs@umich.edu](mailto:jschaafs@umich.edu).

7. See 24 C.F.R. 882.514 and 24 C.F.R. 982.552(c)(ii).

8. See 24 C.F.R. 982.552(b)(2). Housing authorities can set a certain number of years in which they look back over the applicant's record. These typically range from 2 to 7 years, depending on the housing authority.

9. The statute provides for earlier reinstatement of eligibility if the individual completes substance abuse treatment that complies with regulations to be issued by the Department of Education. Unfortunately, it does not appear that regulations have been issued.

10. See 24 CFR 882.514, 24 CFR 882.413 (b) and 24 CFR 983.553 (a)(2).

11. See 24 CFR 882.514, 24 CFR 882.413 (b) and 24 CFR 983.553 (a)(2).

12. See generally, 42 USC 13661. In *Featherstone v Franco*, 703 NYS 2d 11 (NY App Div, 1<sup>st</sup> Feb 1, 2000) a resident was evicted because her teenaged son had committed a string of violent activity that endangered other tenants. It was disputed whether the son actually lived with her.

13. See 42 USC 1437 (d)(6) regarding lease requirements.

14. See 42 USCS 1437f (b)(I) & (ii).

15. See 24 C.F.R. 982.552 (b)(2).

16. Note that the child abuse or neglect need only be "substantiated," so an individual may find him or herself listed on the registry even if he or she is not convicted. However, when a conviction has not occurred, the individual may succeed in challenging placement of his or her name on the registry through an administrative hearing.

17. Other employers may unlawfully refuse to hire persons with criminal convictions, regardless of the nature of the crime or the job to be performed. Such decisions may be unlawful. For a more detailed discussion of employment laws relating to criminal convictions, see Mukamal, Debbie A. "Confronting the

Employment Barriers of Criminal Records: Effective Legal and Practical Strategies," 33 Clearinghouse Review Journal of Poverty Law and Policy 597 (Jan-Feb 2000).

18. Michigan is using a "fixed" period for all persons, rather than a "rolling" clock based on the individual's circumstances. The current 3-year period began December 1, 1999.

19. For example, schools and non-profit programs that serve children may be unwilling to accept volunteers who have been convicted of violent or drug-related crimes.

20. In some circumstances, this "borrowing" of FIP rules to affect Food Stamp eligibility may be unlawful. The rules concerned with work-related penalties are complicated, and many clients may in fact have legal defenses. Clients with work-related penalties should be referred to their local legal aid or legal services office for advice and assistance.

21. Clients threatened with a termination or reduction of assistance can maintain their current level of assistance by requesting a hearing within 11 days of the date on the notice of termination or reduction.

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## ***Glossary of Governmental Assistance Programs and Terms:***

- **Family Independence Program (FIP):** cash assistance for needy families with children (formerly known as Aid to Dependent Children or ADC). FIP is known at the federal level as a "TANF" program (see definition of TANF, below). FIP is funded either by a combination of state and federal funds, or by state funds only, depending on the length of time the family has been on assistance.
- **Food Stamps:** food coupons (soon to be replaced with an electronic "debit cards" similar to ATM or charge cards) that can be used to purchase food. [Note: some households with earned income receive "cash out" in lieu of coupons, under the Food Stamp program. "Cash out" will end when electronic benefits are issued statewide.] Food Stamps are paid for with federal funds, although the state is permitted to keep a share of any reimbursement for "overissued" Food Stamps that it recovers.
- **Program Eligibility Manual (PEM):** one of the public assistance manuals used by the Family Independence Agency. It is available at <http://www.mfia.state.mi.us/olmweb/ex/html>.
- **Public Housing:** housing complexes or "scattered site" housing for low income persons that are publicly owned by Public Housing Authorities, and which have income-based, subsidized rents. Public housing subsidies are federally funded.
- **Public Housing Authority (PHA):** the local governmental body that is charged with operating the federally subsidized housing programs for a particular municipality.
- **Section 8:** housing assistance that provides income-based, subsidized rents to low income persons in privately-owned housing. Some Section 8 assistance is tied to particular housing complexes, while other section 8 assistance is available in the form of a voucher that may be used in any rental housing that meets section 8 standards and has a landlord willing to contract with the agency that administers the section 8 vouchers. Section 8 subsidies are federally funded. Each section 8 program is operated by either a local Public Housing Authority or the Michigan State Housing Development Authority (MSHDA).
- **Supplemental Security Income (SSI):** cash assistance for low income persons with disabilities and persons age 65 or older. SSI is federally funded.
- **State Disability Assistance (SDA):** cash assistance for persons with disabilities. SDA is state funded.
- **State Emergency Relief (SER):** assistance to pay for housing costs or repairs, utilities, and some household goods in certain crisis situations. SER is funded by state and federal money.
- **Temporary Assistance for Needy Families (TANF):** TANF programs are any programs funded by the federal TANF block grant that is the central feature of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the federal welfare reform statute. In Michigan, TANF is used to pay for cash assistance programs for needy families with children, such as Michigan's FIP program (see definition of FIP, above), and for certain other programs and services designed to assist children and families, decrease welfare dependency and out-of-wedlock births, and promote two-parent families.