



COLLATERAL CONSEQUENCES

WAYNE COUNTY CAP

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WHAT ARE COLLATERAL CONSEQUENCES?

- Collateral consequences are legal and regulatory restrictions that limit or prohibit people convicted of crimes from accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities.
- Consequences and ramifications outside the statutory sentence imposed as the result of a particular conviction.
- “Examples of collateral or incidental consequences include the loss of employment, loss of the right to vote, loss of the right to travel freely abroad, loss of the right to a driver's license, loss of the right to possess firearms, a plea's possible enhancing effects on a subsequent sentence, institution of separate civil proceedings against the defendant for commitment to a mental-health facility, loss of goodtime credit, possibility of imposition of consecutive sentences, possibility of undesirable discharge from the armed forces, disqualification from public benefits, and loss of business or professional licenses.” *People v Fonville*, 291 Mich.App. 363 (2011)(internal citations omitted).

WHY DO THEY MATTER?

- Some collateral consequences may be more harmful for clients than the criminal conviction itself.
- Could impact not only the client, but also their family.
- Attorneys need to be aware of them to properly and effectively advise our clients so they can make informed decisions about any plea offer or conviction.
- Can use possible collateral consequences as a factor for consideration during plea negotiations.

CIVIL RIGHTS - VOTING & JURY SERVICE

Voting

- In Michigan, only individuals who have been **convicted of a crime and who are currently incarcerated** are unable to vote.
- MCL 168.758b provides, “A person who, in a court of this or another state or in a federal court, has been legally convicted and sentenced for a crime for which the penalty imposed is confinement in jail or prison shall not vote, offer to vote, attempt to vote, or be permitted to vote at an election while confined.”

Jury Service

- A felony conviction punishable by one year or more disqualifies an individual from serving on a jury in Michigan. MCL 600.1307a.
- For federal jury service, an individual must not currently be subject to felony charges punishable by imprisonment for more than one year; and never have been convicted of a felony (unless civil rights have been legally restored). 28 U.S.C. § 1865(b)(5).

IMMIGRATION

- Immigration consequences can come in many different forms, including removal or deportation, bars from reentry, or revocation of an existing immigration benefit.
- In *Padilla v Kentucky*, 559 US 356 (2010), SCOTUS held that a noncitizen defendant's Sixth Amendment rights require that defense counsel correctly advise of the immigration consequences of any criminal conviction and that failure to advise of the immigration consequences can be the basis for an ineffective assistance of counsel claim.
- You can request an expert for an immigration consultation.
- Plea colloquy – If judge inquires into client's citizenship/immigration status, do not answer/advise client to not answer. Simply inform the judge that your client has been advised of possible immigration consequences.

IMMIGRATION CONTINUED

- Most criminal grounds of deportability require a conviction. What constitutes a conviction for immigration purposes is a question of federal law, and the definition differs from what is considered a conviction under Michigan state law.
- The Immigration and Naturalization Act contains the statutory definition of conviction. 8 U.S.C. § 1101(a)(48)(A) states as follows:

The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where – a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.
- The INA’s definition of conviction is considerably broader than most state definitions and thus includes dispositions that would not otherwise be regarded as a conviction under state law.
- The following Michigan alternative sentencing schemes have been found to be convictions under the Immigration and Nationality Act: Holmes Youthful Trainee Act (“HYTA”); MCL 769.4a domestic violence deferral; MCL 333.7411 possession or use of controlled substance deferral, drug court, and expungement; no contest/nolo contendere pleas; and pleas taken under advisement when the defendant has to plead guilty or no contest or is found guilty by the court and the court imposes some form of punishment or “restraint on liberty.” See *Matter of Punu*, 22 I. & N. Dec. 224 (BIA 1998); *Moosa v. INS*, 171 F.3d 994 (5th Cir. 1999); *Uritsky v. Gonzales*, 399 F.3d 728 (6th Cir. 2005); cf. *Griffiths v. INS*, 243 F.3d 45 (1st Cir. 2001).

IMMIGRATION CONTINUED

- Naturalization, as well as a number of forms of relief from removal or exclusion from the United States, require a finding of “good moral character.” The statutory definition under 8 U.S.C. § 1101(f), specifically *precludes* a finding of good moral character for a person who, during the relevant period is or has been:
 - 1) a habitual drunkard; 2) a member of the class of persons described in 8 U.S.C. § 1182(a)(2)(D) (prostitution and commercialized vice); (6)(E) (alien smugglers); (10)(A) (polygamy) or (2)(A) (crime of moral turpitude or controlled substance offense, except for single offense of simple possession of 30 grams or less of marijuana); or (B) (multiple criminal convictions); or (C) (controlled substance trafficker, including a person who the “immigration officer has reason to believe” is or was an “illicit trafficker in a controlled substance”); 3) one whose income is derived principally from illegal gambling activities, or who has been convicted of two or more gambling offenses; 4) found to have given false testimony to gain any immigration benefits; 5) confined to a penal institution, as a result of a conviction, for an aggregate period of 180 days or more; or 6) convicted of an aggravated felony after November 29, 1990.
- Even if a criminal disposition can be structured to avoid the enumerated grounds, DHS may, in its discretion, find a person not to be of good moral character based upon convictions or even admissions to criminal conduct.
- Evidence of two or more convictions for driving under the influence during the relevant good moral character period establishes a presumption that the noncitizen lacks good moral character.³⁶ This also creates a presumption that any discretionary relief should be denied.
- Source: https://www.aclumich.org/sites/default/files/field_documents/aclu_mi_crimmigration_report_2020.pdf

IMMIGRATION CONTINUED

Other helpful immigration resources:

- <https://www.aclumich.org/en/publications/immigration-consequences-criminal-convictions-michigan-report-and-video-training>
- <https://michiganlegalhelp.org/self-help-tools/immigration/detention-and-deportation>
- <https://michiganimmigrant.org>

DRIVER'S LICENSES

Package of Bills just recently signed by Gov. Whitmer

- HB 5846, HB 5847, HB 5849, HB 5850, HB 5851, HB 5852, HB 6235, and HCR 29, eliminates license suspension for violations of the law unrelated to dangerous driving.
- HB 5853, reclassifies many traffic misdemeanors as civil infractions.
- HB 5854, HB 5855, HB 5856, HB 5857, and HB 5844 eliminates mandatory minimum jail sentences in the Motor Vehicle Code, School Code, Natural Resources and Environmental Protection Act, Railroad Code, and Public Health Code.
- SB 1046, expands law enforcement discretion to issue citations for most misdemeanors and presumes citation in lieu of arrest in many cases.
- SOS Offense Code Index: https://www.michigan.gov/documents/OffenseCode_73877_7.pdf

LIFETIME ELECTRONIC MONITORING

- In *People v Cole*, 491 Mich 325; 817 NW2d 497 (2012), the Michigan Supreme Court held that, based upon the plain language of the relevant statutes, mandatory lifetime electronic monitoring is part of the sentence itself, and thus constitutes punishment that the court must advise the defendant of. *Id.* Since mandatory electronic monitoring constitutes punishment for CSC I and II in Michigan, lifetime electronic monitoring clearly implicates a protected liberty interest. (Technically, a DIRECT consequence).
- In Michigan, lifetime electronic monitoring is **mandatory** for persons convicted of CSC I or CSC II, when the victim is 13-years-old or less and the defendant is 17-years-old or older and is placed on parole or released from prison, if the offense was committed on or after August 28, 2006. This mandatory sentencing also applies to a conviction for conspiracy to commit a sexual offense which requires sentencing to lifetime electronic monitoring. MCL 750.520n; MCL 750.520b(2)(d); MCL 750.520c(2)(b); see also *People v Kern*, 288 Mich App 513, 521-523; 794 NW2d 362 (2010), and *People v Brantley*, 296 Mich App 546, 558-559; 823 NW2d 290 (2012).
- Under the program, a defendant is required to “wear or otherwise carry an electronic monitoring device...in the manner prescribed by that program,” have their movement and location “tracked from the time the individual is released on parole or from prison until the time of the individual's death,” be required to reimburse the department or its agent for the actual cost of the monitoring the individual, and is also subject to further criminal liability for: (a) intentionally removing, defacing, altering, destroying, or failing to maintain the electronic monitoring device in working order; (b) failing to notify the department of corrections that the electronic monitoring device is damaged; or (c) failing to reimburse the department of corrections or its agent for the cost of the monitoring. See MCL 750.520n; MCL 791.285.

SEX OFFENDER REGISTRATION ACT (“SORA”)

- Applying the *Padilla* rationale, the Court of Appeals held that defense counsel must advise a defendant that registration as a sexual offender is a consequence of the defendant's guilty plea and the failure to inform a pleading defendant that the plea will necessarily require registration as a sex offender affects whether the plea was knowingly made. *People v Fonville*, 291 Mich.App. 363 (2011).
- Gov. Whitmer recently signed Public Act 295 of 2020, which amended Michigan’s Sex Offender Registration Act. <http://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2020-PA-0295.pdf>.
- Many attorneys and advocacy groups believe the statute is still unconstitutional.
- Still offense based, classified into Tiers (Tier I, Tier II, and Tier III). Eliminated geographical exclusion zones.
- Pending SORA litigation.

SORA (CONTINUED)

Federal Litigation - Companion Cases - DOES v SNYDER, ET AL (2:12-cv-11194) ("DOES I") & DOES v SNYDER, ET AL (2:16-cv-13137) ("DOES II" – certified class action).

State Litigation - PEOPLE v PAUL J. BETTS, JR. (MSC CASE NO. 148981 – oral argument held October 7, 2020)

- Issues to be briefed: (1) whether the requirements of the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.*, taken as a whole, amount to “punishment” for purposes of the Ex Post Facto Clauses of the Michigan and United States Constitutions, US Const, art I, § 10; Const 1963, art I, § 10; see *People v Earl*, 495 Mich 33 (2014), see also *Does #1-5 v Snyder*, 834 F3d 696, 703-706 (CA 6, 2016), cert den sub nom *Snyder v John Does #1-5*, 138 S Ct 55 (Oct 2, 2017); (2) if SORA, as a whole, constitutes punishment, whether it became punitive only upon the enactment of a certain provision or group of provisions added after the initial version of SORA was enacted; (3) if SORA only became punitive after a particular enactment, whether a resulting ex post facto violation would be remedied by applying the version of SORA in effect before it transformed into a punishment or whether a different remedy applies, see *Weaver v Graham*, 450 US 24, 36 n 22 (1981) (“the proper relief . . . is to remand to permit the state court to apply, if possible, the law in place when his crime occurred.”); (4) if one or more discrete provisions of SORA, or groups of provisions, are found to be ex post facto punishments, whether the remaining provisions can be given effect retroactively without applying the ex post facto provisions, see MCL 8.5; (5) what consequences would arise if the remaining provisions could not be given retroactive effect; and (6) whether the answers to these questions require the reversal of the defendant’s conviction pursuant to MCL 28.729 for failure to register under SORA.
- PEOPLE v DAVID ALLEN SNYDER (MSC CASE NO. 153696) – Held in abeyance pending decision in *Betts*.

EMPLOYMENT RESTRICTIONS & OCCUPATIONAL LICENSING

- General exclusion by employers for felony convictions. Ban the Box campaigns have made some progress.

Michigan Workforce Background Check Act

- MCL 333.20173a (Public Health Code); MCL 330.1134a (Mental Health Code); MCL 400.734b (Adult Foster Care Licensing Act).
- https://www.michigan.gov/lara/0,4601,7-154-89334_63294_79876---,00.html
- https://www.michigan.gov/documents/lara/January_24_LTC_Workforce_Background_Check_Seminar_Document_s-2_slides_pp_644147_7.pdf

EMPLOYMENT RESTRICTIONS & OCCUPATIONAL LICENSING

- We should be inquiring about clients' employment and employer, ask about any licenses or business registrations/permits (in and out of state), and then review relevant professional or occupational codes.
- Professional & Occupational Licenses under the Public Health Code and the Occupational Code.
- Public Health Code – Covers health professions. 26 Professional Boards, which oversee various licenses (RN, CAN, etc.).
- Occupational Code – Covers various occupations requiring licensing (Accounting, Real Estate, Cosmetology, etc.).
- What type of professional or occupational disciplinary process could the client face?
- SOM License Search: <https://www.michigan.gov/statelicensesearch/0,3270,7-180-24786---,00.html>
- SOM Verification of License: <https://www.michigan.gov/lara/0,4601,7-154-89512---,00.html?page=1&limit=10&filterCategories=&searchQuery=>

EMPLOYMENT RESTRICTIONS & OCCUPATIONAL LICENSING

- House Bills 4488-4492 and Senate Bill 293 comprise the Good Moral Character Package which reforms occupational licensing to expand opportunities for Michiganders post-conviction or post-judgment. The package places limits on a Board or Agency responsible for reviewing license applications from considering criminal convictions and civil judgments when determining if an applicant is of "good moral character" so that past convictions and civil judgments would be less likely to serve as a barrier to entry to licensed professions. See Licensing of Former Offenders Act (MCL 338.41, et. seq.)
- House Bill 4488 limits the situations in which a licensing board may consider criminal convictions and civil actions in determining an applicant's good moral character. House Bill 4489 clarifies that the adjustments made in HB 4488 do not apply to determining "good moral character" for admission to the State Bar of Michigan and that for those purposes, good moral character would be determined by the Board of Law examiners.
- House Bills 4490-92 revise the definition of "good moral character" within specific acts to align with the changes in HB 4488.
- Senate Bill 293 amends the Occupational Code to require the Department of Licensing and Regulatory Affairs (LARA) to report annually to the legislature regarding applications for occupational licenses that were denied because of an applicant's lack of good moral character.

EMPLOYMENT RESTRICTIONS & OCCUPATIONAL LICENSING

Public Health Code

- "Conviction" = "A judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill." MCL 333.16103(5).
- All convictions must be reported
 - ✓ Guilty, no contest, GBMI – reportable.
 - ✓ Deferred or delayed sentence – MCL 771.1 – reportable.
 - ✓ Delayed adjudication with deferred judgment of guilt – HYTA, 741 I, drug treatment court - not reportable.
 - ✓ Plea under advisement under MCR 6.302(F) does not result in a conviction – not reportable.
- Sanctions, see MCL 333.16226.
- Health Professional Recovery Program ("HPRP") - <http://hprp.org>

TRAVEL

- Some criminal convictions can preclude entry into other countries (“criminally inadmissible”).
- Canada, i.e. OWI offenses = criminal inadmissible – can apply for Criminal Rehabilitation.

Sex Offenders

- The passport identifier provision of International Megan's Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders (IML) (Public Law 114-119) went into effect on October 31, 2017.
- The IML prohibits the Department of State from issuing a passport to a covered sex offender without a unique identifier, and it allows for the revocation of passports previously issued to these individuals that do not contain the identifier (22 USC 212b). The identifier is a passport endorsement, currently printed inside the back cover of the passport book, which reads: “The bearer was convicted of a sex offense against a minor, and is a covered sex offender pursuant to 22 United States Code Section 212b(c)(1).” Since endorsements cannot be printed on passport cards, covered sex offenders cannot be issued passport cards.
- <https://travel.state.gov/content/travel/en/News/passports/passports-and-international-megans-law.html>

OTHER COMMON CIVIL CONSEQUENCES

- Housing
- Child Support
- Benefits – Food Assistance Program (“FAP”), cash assistance (Family Independence Program (“FIP”), /TANF
- Termination of Parental Rights
- Student Loans
- And more!

HOUSING

- Access to housing is central to the stability of individuals and their communities.
- Criminal records can prevent clients from qualifying for subsidized housing.
- Housing sanctions are not limited to convictions, and not limited to felony convictions.
- Housing issues create tremendous barriers for clients and their families.
- Private Landlords can evict an individual for criminal activity relating to the tenancy. This is particularly common in drug cases.
- Private landlords may also deny housing because of a criminal record or sex offender status.

HOUSING (CONTINUED)

- Admission to programs, 24 C.F.R. 960.203 & 204. There is discretionary denial for any violent criminal activity or any other criminal activity that would adversely affect health, safety, or right to the peaceful employment of the premises by other residents, the owner, or the Public Housing Authority.
- The applicant may be required to exclude a family member who has participated in or has been culpable for criminal, alcohol or drug related activity. Termination or eviction, 42 U.S.C. § 1437d, 24 CFR 966.4 - Individuals may be evicted for crimes entailing a threat to other residents.
- Termination or eviction, 42 USC § 1437d, 24 CFR 966.4 - Individuals may be evicted for crimes entailing a threat to other residents. Neither an arrest nor a conviction is necessary, and the standard of proof required for a criminal conviction need not be satisfied. However, the housing authority must provide some evidence that the criminal activity has occurred.

CHILD SUPPORT

Filing a Motion for Modification of Child Support

- A client sentenced to prison, should file **immediately** because support is not subject to retroactive modification.
- MCL 552.603(2) provides, “Except as otherwise provided in this section, a support order that is part of a judgment or is an order in a domestic relations matter ... is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification. Retroactive modification of a support payment due under a support order is permissible with respect to a period during which there is pending a petition for modification, but only from the date that notice of the petition was given to the payer or recipient of support.” See also, *McLaughlin v McLaughlin*, 255 Mich App 475, 660 NW2d 784 (2003).
- Client can request a fee waiver due to indigency by filing FOC 111 (Prisoner Affidavit and Order for Suspension of Fees/Costs).

Review of Child Support Order

- Under MCL 557.517(1)(b), the Friend of the Court can review a child support order, “Upon receipt of a written request from either party. Within 14 days after receipt of the review request, the office shall determine whether the order is due for review. The office is not required to act on more than 1 request received from a party each 36 months.”
- Under MCL 557.517(f)(v)(B), the Friend of the Court can review a child support order, “*At the initiative of the office*, if there are reasonable grounds to believe that the amount of child support awarded in the judgment should be modified or that dependent health care coverage should be modified, or both. Reasonable grounds to review an order under this subdivision include any of the following...Incarceration or release from incarceration after a criminal conviction and sentencing to a term of more than 1 year. Within 14 days after receiving information that a recipient of support or payer is incarcerated or released from incarceration as described in this sub-subparagraph, the office shall initiate a review of the order.”

Arrearages

- Once arrearages accrue, support can only be forgiven by the other party (the state or the payee). The payee can agree to forgive arrearages or the state can agree state owed arrearages. <https://www.3rdcc.org/Documents/FamilyDomestic/FOC/Miscellaneous/FD-FOC%204127%20Discharge%20of%20State%20Owed%20Arrears%5E%5E%5E.pdf>

FEDERAL & STATE BENEFITS

21 U.S.C. § 862a

An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 802(6) of this title) shall not be eligible for—

(1) assistance under any State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], or (2) benefits under the supplemental nutrition assistance program (as defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)) or any State program carried out under that Act [7 U.S.C. 2011 et seq.].

- 21 U.S.C. § 862a(d)(1)(A) and (B) - Permit states to opt out or limit the period of prohibition. Michigan has opted out of the ban.
- Thus, individuals with one felony drug conviction are still eligible for benefits; however, those with more than one felony drug conviction after 1996 are not. BEM 203.
- Certain benefits are excluded from the ban, such as emergency medical services, certain public health benefits, drug treatment programs, Medicaid, Social Security disability, and supplemental Social Security income.
- Advise clients that other states can impose the ban in varying degrees in case they plan to move to another state.
- New Michigan legislation - Senate Bill 1006, signed by Gov. Whitmer, amends the Social Welfare Act to allow individuals who committed a drug-related offense, or have outstanding warrants for such offenses, to access the Supplemental Nutrition Assistance Program (SNAP) and other food assistance.

BENEFITS CONTINUED – PROBATION & PAROLE

Family Independence Program (“FIP” or “Cash Assistance”), Refugee Cash Assistance (“RCA”), State Disability Assistance (“SDA”)

- A person who is violating a condition of probation or parole imposed under a federal or state law is disqualified.
- The person is disqualified as long as the violation occurs.
- A person is considered to be violating probation or parole if the Michigan Department of Health and Human Services (MDHHS) is made aware that the individual is in violation of a condition of probation or parole imposed under federal or state law.

Food Assistance Program (“FAP”)

- A person is disqualified because of a probation or parole violation if all the following conditions are met:
- MDHHS verifies with law enforcement, the courts or the MDOC that the individual is found to be violating a condition of probation or parole imposed under federal or state law.
- The individual is absconding from supervision; see BPG Glossary for definition of absconding.
- Federal, state, or local law enforcement, or Michigan Department of Corrections authorities are actively seeking the individual to enforce the conditions of the probation or parole.

BENEFITS CONTINUED – WELFARE FRAUD CHARGES

<p>If you do any of the following: Make a false or misleading statement. Hide, misrepresent, or withhold facts to receive or continue to receive benefits. Trade, attempt to trade, or sell less than \$500 in FAP benefits or Bridge Cards online or in person. Use or attempt to use FAP benefits to buy ineligible items such as alcoholic drinks or tobacco. Purchase beverages with FAP benefits then immediately empty the contents and return container for the cash. Use or attempt to use FAP benefits or Bridge Cards that belong to someone else for your household.</p>	<p>You will lose FIP/SDA and/or FAP benefits for: 1 year for the first violation 2 years for the second violation Life for the third violation</p>
<p>If you are:</p> <ul style="list-style-type: none"> • Found by a court or an administrative hearing to have lied about your identity or where you live to receive benefits in two or more states at one time. 	<p>You will lose FAP benefits for:</p> <ul style="list-style-type: none"> • 10 years
<p>If you are:</p> <ul style="list-style-type: none"> • Convicted in court of lying about your identity or where you live to receive benefits in two or more states at one time. Benefits include programs funded under Title IV-A of the Security Act, Medicaid and Supplemental Security Income. 	<p>You will lose FIP benefits for:</p> <ul style="list-style-type: none"> • 10 years
<p>If any member of the household is found guilty in court of:</p> <ul style="list-style-type: none"> • Trading FAP benefits for drugs. 	<p>You will lose FAP benefits for: 2 years for the first offense Life for the second offense</p>
<p>If any member of the household is found guilty in court of: Trading or attempting to trade FAP benefits for firearms, ammunition, or explosives. Trading, buying, or selling or attempting to trade, buy, or sell FAP benefits of \$500 or more for anything other than food online or in person. Paying or attempting to pay for food purchased on credit with FAP.</p>	<p>You will lose FAP benefits for:</p> <ul style="list-style-type: none"> • Life

TERMINATION OF PARENTAL RIGHTS

MCL 712A.19b

Section (3)(b): "The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances: (i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home. (ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home. (iii) A nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home."

Section (h): "The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

Section (k): "The parent abused the child or a sibling of the child, the abuse included 1 or more of the following, and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent: (i) Abandonment of a young child. (ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate. (iii) Battering, torture, or other severe physical abuse. (iv) Loss or serious impairment of an organ or limb. (v) Life-threatening injury. (vi) Murder or attempted murder. (vii) Voluntary manslaughter (viii) Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter. (ix) Sexual abuse as that term is defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622."

Section (l): "The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state and the proceeding involved abuse that included 1 or more of the following, and the parent has failed to rectify the conditions that led to the prior termination of parental rights: (i) Abandonment of a young child. (ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate. (iii) Battering, torture, or other severe physical abuse. (iv) Loss or serious impairment of an organ or limb. (v) Life-threatening injury. (vi) Murder or attempted murder (vii) Voluntary manslaughter. (viii) Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter. (ix) Sexual abuse as that term is defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622."

Section (m): "The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child: (i) A violation of section 136, 136a, 316, 317, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136, 750.136a, 750.316, 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g. (ii) A violation of a criminal statute that includes as an element the use of force or the threat of force and that subjects the parent to sentencing under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12. (iii) A federal law or law of another state with provisions substantially similar to a crime or procedure listed or described in subparagraph (i) or (ii)."

STUDENT LOANS

Federal Student Loans

- Federal law suspends eligibility for any grants, loans, or work assistance for students convicted while receiving student aid of any offense under federal or state law involving the possession or sale of a controlled substance.
- Federal law denies the hope tax credit to a student and his or her family if the student has a prior felony drug conviction. IRC 25A(b)(2)(D).
- In possession cases, the period of suspension begins on the date of conviction and lasts one year for the first offense, two years for the second, and indefinitely for the third. For convictions for the sale of a controlled substance, the suspension lasts two years for the first offense and indefinitely for the second. There are also waiver or rehabilitation provisions. See 20 U.S.C. 1091(r)(2).

MILITARY SERVICE & BENEFITS

Felons are ineligible to enlist in military service.

- Secretary of the Branch may make “meritorious case” exceptions. 10 U.S.C. § 504(a).
- After 60 days in custody on any conviction- felony/misdemeanor no military pension, but may be paid to spouse or child(ren). 38 U.S.C. §1505.

EXPUNGEMENT

Recent Clean Slate Bill Package Signed

- You can view the Expungement training video by Kristin LaVoy at: <https://youtu.be/ntowdJdZvVM>.
- Materials can be accessed at: https://ndsny-my.sharepoint.com/:b:/g/personal/klavoy_ndsdetroit_org/ETkHj93PIbNFrCIYQNLtqbsBCCdVpvMkkSLtiPIHBaUoTA?e=waD7II.

Changes in a Nutshell

- Eased requirements for petitions and creates framework for automatic expungement of some offenses (automatic expungement eff. 4/11/23).
- Most traffic offenses are now expungeable (Whitmer “pocket vetoed Bill re OWIs though).
- A streamlined process for expunging some marijuana convictions.
- Increases amount eligible to be expunged (petitions – 3 felonies, unlimited misdemeanors; automatic – 2 felonies, 4 misdemeanors).
- You can also visit Safe & Just Michigan’s site: <https://www.safeandjustmi.org>. FAQ sheet: https://www.safeandjustmi.org/wp-content/uploads/2020/11/Clean_Slate_FAQ_10272020.pdf.

FIREARMS

- Felons are ineligible to possess or purchase firearms or ammunition unless their right to possess a firearm is restored pursuant to MCL 750.224f.
- Felony – 3 yrs. and other specific circumstances.
- “Specified felony” - 5 yrs. and other specific circumstances.
- CPL Requirements and convictions that preclude license: https://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-10926--,00.html.

PROBATION & PAROLE

Revocation of HYTA

- Must comply with SORA. Court MUST revoke HYTA for any willful violation of SORA. MCL 762.14(3), MCL 762.12(3)
- Under MCL 762.12(2), the court SHALL revoke if the individual pleads guilty to or is convicted of any of the following during the period of assignment:
 - (a) A felony for which the maximum penalty is imprisonment for life.
 - (b) A major controlled substance offense.
 - (c) A violation, attempted violation, or conspiracy to violate section 82, 84, 88, 110a, 224f, 226, 227, 227a, 227b, 520b, 520c, 520d, 520e, 529a, or 530 of the Michigan penal code, 1931 PA 328, MCL 750.82, 750.84, 750.88, 750.110a, 750.224f, 750.226, 750.227, 750.227a, 750.227b, 750.520b, 750.520c, 750.520d, 750.520e, 750.529a, and 750.530, other than section 520d(1)(a) or 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d and 750.520e.
 - (d) A violation, attempted violation, or conspiracy to violate section 520g of the Michigan penal code, 1931 PA 328, MCL 750.520g, with the intent to commit a violation of section 520b, 520c, 520d, or 520e of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, and 750.520e, other than section 520d(1)(a) or 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d and 750.520e.
 - (e) A firearm offense. A "firearm offense" means a crime involving a firearm as that term is defined in section 1 of 1927 PA 372, MCL 28.421, whether or not the possession, use, transportation, or concealment of a firearm is an element of the crime.

PROBATION & PAROLE (CONTINUED)

Technical Probation Violation Statute, MCL 771.4b

- A probationer who commits a technical probation violation and is sentenced to temporary incarceration in a state or local correctional or detention facility may be incarcerated for a maximum of 30 days for each technical violation...”
- A "technical probation violation" means a violation of the terms of a probationer's probation order **that is not a violation of an order of the court requiring that the probationer have no contact with a named individual or that is not a violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law, and does not include the consumption of alcohol by a probationer who is on probation for a felony violation of section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625.**
- Agent recommendations and responses to violations shall be proportional to the seriousness of the violation, the risk of the probationer to the community and the probationer's overall adjustment to probation. MDOC Policy Directive 06.06.120.

PROBATION & PAROLE (CONTINUED)

Preliminary Parole Violation Hearings

- Unless the parolee waives the preliminary parole violation hearing or requests a postponement in writing, the preliminary parole violation hearing shall be conducted within ten calendar days after the parolee is arrested and becomes available for return to the Department.
- A parolee who is charged with violating a condition of parole is entitled to a preliminary parole revocation hearing conducted pursuant to Administrative Rule 791.7740 through 791.7750 to determine if there is probable cause to believe that s/he violated parole except under the following circumstances:
 - The parolee has been bound over to the Circuit Court on a criminal charge for which s/he also is charged with parole violation. In such cases, probable cause for that parole violation charge is established based on the court's action. This does not apply if the parolee waived the preliminary examination in District Court.
 - The parolee has been convicted of a criminal charge for which s/he also is charged with parole violation. This includes a conviction by trial or by guilty or nolo contendere (i.e., no contest) plea. In such cases, probable cause for that parole violation charge is established based on the conviction.
 - A formal parole violation hearing is conducted in lieu of the preliminary parole violation hearing. In such cases, notice shall be provided as required pursuant to MCL 791.240a.

Parole Violation Hearing

- A parolee convicted of a felony while on parole who receives a new sentence to be served with the Department shall be found to have violated parole based on that new conviction and sentence. A parole violation hearing is not required.
- If the parolee has been convicted of an offense which formed the basis for a parole violation charge, that s/he is entitled to a hearing only on the issue of mitigation.
- If hearing held, a preponderance of the evidence standard is used (so if charges are dismissed or client found not guilty, still a possibility for a parole violation). MDOC Policy Directive 06.06.100.

HABITUAL OFFENDER SENTENCING & ENHANCEMENTS

- Under Michigan's current habitual offender laws, once you have previously been convicted of one or more felonies (or attempts to commit felonies), you can be sentenced for subsequent felony charges as a "habitual offender." A habitual offender faces sentencing enhancements ranging from 25 percent, 50 percent, or 100 percent depending on the number of previous felony convictions on top of any sentence they could receive for an immediate offense for which they are being convicted. The statutory maximum is also increased by these laws. See MCLs 769.10, 769.11, 769.12.
- Anyone convicted of a "serious crime" that have at least 3 prior felonies, with one prior conviction being a "listed felony," can be subject to a 25-year mandatory minimum prison sentence under MCL 769.12.
- "Serious crimes" = second degree murder, manslaughter, assault with intent to commit murder, assault with intent to go great bodily harm, assault by strangulation, assault with intent to maim, assault with intent to rob while armed, assault with intent to rob while unarmed, armed robbery, carjacking, kidnapping a child under 15 years of age, prisoner taking hostage, mayhem, criminal sexual conduct, first degree, criminal sexual conduct, second degree, criminal sexual conduct, third degree, assault with intent to penetrate, and conspiracy to commit any of these offenses. MCL 769.12(6)(c).
- "Listed Offense" = second degree murder, manslaughter, felonious assault, assault with intent to commit murder, assault with intent to go great bodily harm, assault by strangulation, assault with intent to maim, assault with intent to rob while armed, assault with intent to rob while unarmed, armed robbery, carjacking, kidnapping a child under 15 years of age, prisoner taking hostage, mayhem, criminal sexual conduct, first degree, criminal sexual conduct, second degree, criminal sexual conduct, third degree, assault with intent to penetrate, attempted murder, solicitation to commit murder, aggravated stalking, felony stalking with victim under 18 years, rioting in a state correctional facility, home invasion, first degree, home invasion, second degree, any drug offense punishable by more than 4 years in prison, child abuse, first degree, child abuse, second degree, vulnerable adult abuse, first degree, vulnerable adult abuse, second degree, assault of employee during escape, fleeing and eluding, first degree, fleeing and eluding, second degree, impaired driving causing death, arson of dwelling house, carrying weapon with unlawful intent, carrying a concealed weapon, felony firearm (second or subsequent offense), intentional discharge of firearm at vehicle, intentional discharge of firearm at dwelling, intentional discharge of firearm at emergency or law enforcement vehicle, and attempt to commit any of the offenses listed.
- Felony offenses for which a previous conviction may not be used for enhancement under the general habitual offender statutes if it is used to enhance the offense under the statute prohibiting the criminal conduct, see Statutory Offense Enhancement Table: <https://mjieducation.mi.gov/documents/criminal-qrms/320-stat-off-enh-tbl/file>.

Defendant's sentence in this case **may, in the court's discretion**, be served **consecutively** with the imposition of any

other sentence:

- An assault committed while in jailMCL 750.506a
- A felony (non-major VCSA) while a felony pending.....MCL 768.7b
- Del/PWID/Manuf Sched I, II or cocaine with another felony.....MCL 333.7401(3)
- Corruption of juror, referee, arbitrator, etc.MCL 750.119
- Juror or witness intimidation or retaliationMCL 750.120a; 750.122
- Withholding, concealing, or influencing evidence.....MCL 750.483a

Defendant's sentence in this case **may, in the court's discretion**, be served **consecutively** with the imposition of any other sentence for an offense arising out of the same **transaction**:

- CarjackingMCL 750.529a(2)
- Home Invasion 1st.....MCL 750.110a(8)
- Disarming an officerMCL 750.479b(4)
- Resisting and obstructing an officerMCL 750.81d(6)
- Assaulting a public officer.....MCL 750.479(7)
- Terrorism - vulnerable targetMCL 750.212a(1)
- Poisoning.....MCL 750.436(4)
- Using a computer to commit a designated crimeMCL 750.145d(3); 752.797(4)
- Possession of a weapon in commercial airport.....MCL 259.80f
- Violent act while wearing body armorMCL 750.227f
- Identity Theft.....MCL 445.69(4)
- CSC 1st DegreeMCL 750.520b(3)
- CSC Electronic Tether ViolationMCL 750.520n(4)
- Embezzle, "V" non-profit, >60 years old, vulnerable adultMCL 174(12)
- False representing as pol off, ME, firefighter, EMSMCL 750.215; 750.217f

Defendant's sentence in this case **may, in the court's discretion**, be served **consecutively** with the imposition of any other sentence for a violation of the same **statute**:

- Misrepresentation of facts re: condominium project.....MCL 559.258
- False Medicaid claimsMCL 400.604
- Death from op of vehicle, vessel, etc., each victim.....MCL 769.36

Defendant's sentence in this case **shall** be served **consecutively** with the imposition of any other sentence:

- A crime committed while serving sentence in prison/jailMCL 768.7a
- A crime committed during escape from prison/jailMCL 768.7a
- A felony committed while on parole.....MCL 768.7a
- A major VCSA committed while a felony is pending.....MCL 768.7b; 761.2
- Felony FirearmMCL 750.227b
- Prison Escape.....MCL 750.193; MCL 768.7a
- Jail EscapeMCL 750.195; MCL 750.196
- Escape awaiting felony procedure.....MCL 750.197(2)
- Prisoner taking a hostageMCL 750.349a

CONSECUTIVE SENTENCING

Court must advise of possibility of consecutive sentences (this is new – see *People v Warren*, ___ Mich ___ (Docket No. 158065, 4/29/2020).

RESOURCES

- National Inventory of Collateral Consequences of Conviction: <https://niccc.nationalreentryresourcecenter.org>
- <https://ccresourcecenter.org>
- Detroit Justice Center: <https://www.detroitjustice.org>
- MDOC Policy Directives: https://www.michigan.gov/corrections/0,4551,7-119-1441_44369---,00.html
- <https://dhhs.michigan.gov/OLMWEB/EX/BP/Public/BEM/203.pdf>
- <https://michiganlegalhelp.org>