



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 3

TO: MEMBERS OF THE STUDY COMMITTEE ON REDUCING RECIDIVISM AND REMOVING IMPEDIMENTS TO EX-OFFENDER EMPLOYMENT

FROM: Michael Queensland and Melissa Schmidt, Senior Staff Attorneys

RE: Collateral Consequences of Conviction

DATE: July 6, 2016

The Study Committee on Reducing Recidivism and Removing Impediments to Ex-Offender Employment is directed, in part, to review effective strategies and best practices for reducing recidivism. The Study Committee's work may include exploring existing impediments to ex-offenders reacclimating to society, including collateral consequences of conviction. This Memo is intended to acquaint members of the Study Committee with the concept of collateral consequences of conviction.

CRIME AND CRIMINAL PENALTIES

A crime is defined by statute to mean "conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime." A crime punishable by imprisonment for more than one year is a felony. A crime that is punishable by imprisonment for less than one year is a misdemeanor. If a statute specifies a maximum term of imprisonment of one year, the crime is a misdemeanor if the statute specifies that a one-year sentence should be served in a county jail; otherwise, the crime is a felony. With the exception of crimes for which the statutes specify a minimum penalty, criminal penalties are expressed, in the Wisconsin statutes, as a fine not to exceed a specified amount, imprisonment not to exceed a specified amount of time, or both. [ss. 939.12, 939.50, 939.51, and 973.02, Stats.]

COLLATERAL CONSEQUENCES OF CONVICTION

Beyond criminal penalties, federal, state, and local laws impose additional consequences on people convicted of crimes. These consequences are commonly referred to as "collateral

consequences” or “civil consequences of conviction.” The American Bar Association (ABA) has described collateral consequences as follows:

Collateral consequences are the penalties, disabilities, or disadvantages imposed upon a person as a result of a criminal conviction, either automatically by operation of law or by authorized action of an administrative agency or court on a case by case basis. Collateral consequences are distinguished from the direct consequences imposed as part of the court’s judgment at sentencing, which include terms of imprisonment or community supervision, or fines. Put another way, collateral consequences are opportunities and benefits that are no longer fully available to a person, or legal restrictions a person may operate under, because of their criminal conviction.¹

Collateral consequences are varied and serve a range of purposes. For example, a collateral consequence may apply to anyone convicted of a particular crime or it may apply to anyone convicted of a class of crimes. Furthermore, a collateral consequence may be intended to serve a deterrent effect, protect the public from activity related to an underlying crime, or serve some other purpose. Some well-known collateral consequences include the following:

- **Firearms.** A person convicted of a felony, or found not guilty of a felony by reason of mental disease or defect, is prohibited from possessing a firearm. Wisconsin law generally requires that a person convicted of a felony be pardoned before being permitted to possess a firearm. [s. 941.29, Stats.]
- **Voting.** A person convicted of a felony may not vote in any election until his or her sentence has been completed or the person has been pardoned. [s. 6.03 (1) (b), Stats.]
- **Citizenship and immigration.** Under federal law, a noncitizen charged with a crime may be deported or deemed inadmissible to obtain citizenship.
- **Employment.** A person charged with or convicted of a crime can lose his or her license or certificate necessary to work, depending on the specific crime and license or certificate held. In addition, an employer may generally consider a conviction record of an employee or applicant if the underlying offense is substantially related to the particular job.²
- **Public benefits.** A person convicted of certain crimes may lose his or her eligibility for some public benefits.

¹ National Institute of Justice (NIJ) and ABA, “National Inventory of the Collateral Consequences of Conviction,” available at: http://www.abacollateralconsequences.org/user_guide/.

² For more information, see “Arrest and Conviction Records Under the Law”, prepared by the Wisconsin Department of Workforce Development, available at: https://dwd.wisconsin.gov/er/discrimination_civil_rights/publication_erd_7609_p.htm.

- **Driving.** A person convicted of certain crimes may have his or her driver's license suspended or revoked. [e.g., ss. 343.06 (1) (i), 343.30, and 343.31, Stats.]

OTHER RESOURCES

The following resources provide additional information about collateral consequences of conviction:

- **Civil Consequences of a Conviction: The Impact of Criminal Records Under Wisconsin Law (November 2012)**, prepared by the Wisconsin State Public Defenders Office (SPD), available at:
<http://wispd.org/images/AppellateFolder/templatesforms/CivConseqConv.pdf>.
- **National Inventory of the Collateral Consequences of Conviction**, prepared by NIJ in collaboration with ABA, available online in a searchable infobase at:
<http://www.abacollateralconsequences.org/>. This study has identified collateral consequences of a conviction in each state, including 693 collateral consequences under Wisconsin law.
- **Felony Convictions and Employment (Wisconsin Law)**, prepared by SPD in October 2014, available online at:
<http://wispd.org/images/AppellateFolder/FelonyConvictionsandEmploy.pdf>. This article identifies possible employment consequences of felony convictions under Wisconsin law.

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