



Lifetime Punishments



Confronting & Avoiding Collateral Consequences of Criminal Charges & Convictions

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Strengthening the Sixth
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What we are NOT going to cover

- Voting (because Maine is awesome—though out of state clients could be banned and Mainers who move away can be banned, too.)
- Jury duty (ibid.)
- Holding public office (okay since 2019 in Maine)
- Child custody & other family law impacts
- “Crimmigration” (contact Barbara Taylor—seriously) (also, immigration is NOT a “collateral” consequence, per *Padilla v. Kentucky*. Its severity is akin to imprisonment.)
- Literally 99 percent of the 1,000,000 ways a criminal charge or conviction can mess up your life.



What we *are* going to cover (at breakneck speed!)

- Guns (just a smidge)
- Driving
- Housing & Other Public Benefits
- Sex crimes & SORNA
- Education loans & grants
- Employment & Licensing
- STIGMA
- Hope?



Why is this important?

- Reviewing goals with clients
 - Avoid a felony?
 - Avoid jail?
 - Avoid a conviction altogether?

EFFECTIVE assistance of counsel

More than just a warm body & a bar card
Help them navigate and clear hurdles

What is most important to you?

What are you most afraid of or concerned about?



When do “collateral consequences” kick in?

- Can be as soon as the point of police contact
- Arrest
- Charge
- Bail
- Local paper
- Waiting for trial
- Conviction
- Really, at any point during the criminal process
- Google is FOREVER



What is a “collateral” consequence?

Anything beyond incarceration, fines, probation:
i.e. the formal sentence received for a criminal
conviction

Can often be much more serious and longstanding
than the actual punishment itself.

Legalized discrimination against those with contact
with the criminal punishment system. “Criminal” is
not a protected status.

Makes reintegration into society that much more
difficult. Creates a permanent “subclass” of
citizens.

Just as criminal punishments disproportionately
impact Black people and other people of color—so
too do collateral consequences.

What are your duties as counsel?



Clients must make decisions regarding their cases that are knowing, intelligent, and voluntary.



You need to provide them with the information they need to make an informed decision.



This work includes: researching things we do not know; double-checking; consulting with experts and authorities.



Document, document, document.



If you mess up, misadvise, get something wrong?

OWN UP TO IT & FIX IT

**Remember to ask me how!*

Maine: A Hunter's Paradise

- It is estimated that there are 1.3 million guns in Maine (900,000 rifles and shotguns and 400,000 handguns)—enough guns for every man, woman, and child that reside in the state.
 - Yeehaw!
- Mainers

Gun Prohibition BASICS (not comprehensive!)



- Rules of thumb for gun prohibitions
 - This is a changing area of the law. (See, e.g., *Bruen* and what will be its progeny)
 - Prohibitions on gun & ammo possession against those convicted of felonies still good law.
 - Also prohibited WHILE UNDER INDICTMENT for a felony charge.
 - Most domestic violence-related convictions—regardless of whether they are misdemeanors—will result in a prohibition against guns & ammo.
 - “Hiding” the DV nature of the charge, i.e. a drop-down to assault, will not save you if the alleged victim fits “family or household member status.”
 - Active Protection from Abuse and Protection from Harassment (if gun was used in the harassment) orders can lawfully--for now—prohibit gun & ammo possession.
 - If your client or his/her family care at all about guns, you need to drill down into how their charges could impact their 2nd Amendment rights!

Need more particularized information?

- The Gun Control Act of 1968 (GCA) is the source of firearms law across the country. The GCA sets forth who can and cannot own or operate firearms in the United States. The main components of the GCA are located in 18 U.S.C. 922.
- The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the federal law enforcement agency that enforces the GCA.
- Under U.S. law, only **citizens** and **lawful permanent residents** who are at least **18 years old** can possess or sell firearms or ammunition.



Maine's Laws re: Firearm Possession



- [15 M.R.S. § 393 \(2022\)](#)

- Everyone—Go to this statute. Right now.
- You understand it?
- You do?
- Clear as mud?
- Read it again . . . And again . . . And again.
- And please refer to it every single time you have a case that could possibly impact someone's right to possess a firearm.
- If you represent youth accused of crimes, this statute will be very important for you, too!
- "Better to be safe than sorry" applies here, as well.

Why driving in Maine is sooooo important!

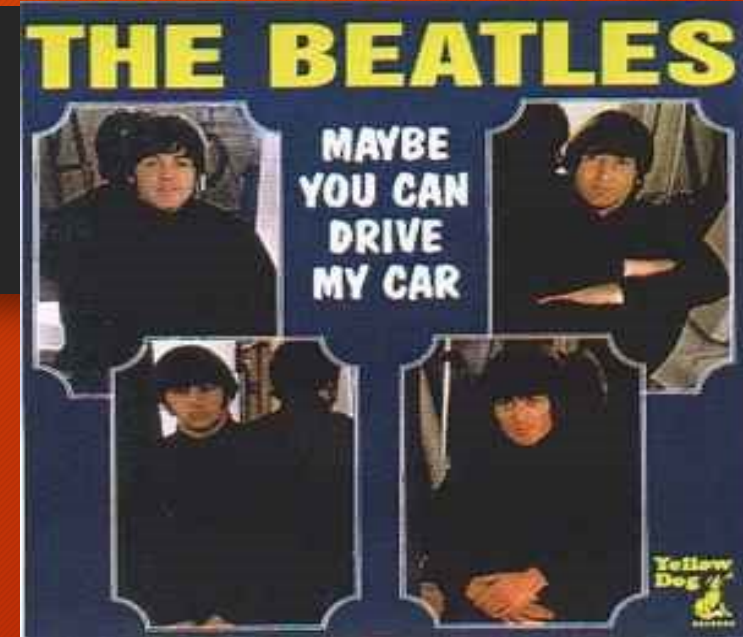
- Maine is the most (THE MOST) rural state in America.
- 90 percent of our land is covered by forests.
- Public transportation is essentially non-existent in the vast majority of the state.
- If you can't drive, you can't work. If you can't work, you can't eat.
- 200,000+ Maine drivers have at least one OUI conviction on their record.
- Equal opportunity offense—devastating for everyone!



Maybe (?) You Can Drive My Car!

*probably not, though

- Step one in any driving case:
 - Get a certified copy of their complete driving record. (Usually in initial discovery.)
 - Highlight any and all criminal convictions on that record— noting the dates of offense and conviction.
 - If client is from out of state, get a copy of their record from that state.



Hit the Books!: Rules & Statutes

- Habitual offender revocation eligible offenses
- Suspension times for certain driving offenses
- Interplay between BMV & Court processes—i.e. consecutive suspensions for refusals/passengers < 21, how striking a prior in criminal court doesn't mean BMV will follow suit.
- Requesting an administrative hearing whenever possible!
- Negotiating resolutions directly with arresting officer—rather than be held subject to the whims of whatever hearings officer you happen to get.



Shameless (but selfless) plug! Buy these books!

MAINE OUI LAW

2018 EDITION

Edmund R. Folsom, Esq.

MAINE DRIVER'S License Suspensions, Revocations and Related Offenses (non - OUI)

2016 Edition

By Edmund R. Folsom, Esq.

Please join me
in harassing Ed
to publish an
updated edition
of both of
these!

Contact Ed at:
edfolsomlaw@gmail.com

Housing Struggles Post-Conviction



Public Housing: Bureaucracy & Barriers



- In the short-term, incarceration can force someone to lose their housing and vouchers for housing—essentially forcing people into homelessness once released.
- Under federal law, people who must register as sex offenders or who are convicted of producing meth are prohibited *for life* from any public housing or assistance.
- Local public housing authorities have broad discretion regarding whom they can prohibit from living in their properties.
- Some prohibitions are time-limited, but people with felony convictions can expect a very difficult time securing housing.
- If a person allows a prohibited person to reside with them in public housing, they can lose their housing, as well. Vicious.

As with anything, it's worse for people convicted of sex offenses

- If the felony-level sex offense was committed against a child under the age of 14, a municipality can impose restrictions on a convicted person's residence. See 30-A M.R.S. § 3014
 - (1) A municipality may prohibit residence by a sex offender up to a maximum distance of 750 feet surrounding the real property comprising:
 - (1) A public or private elementary, middle or secondary school;
 - (2) A municipally owned or state-owned park, athletic field or recreational facility that is open to the public where children are the primary users; or
 - (3) A municipally owned or state-owned property leased to a nonprofit organization for purposes of a park, athletic field or recreational facility that is open to the public where children are the primary users.
- Be sure to check with local municipality regarding their specific restrictions.

What's the result?

- One of the worst housing crises in state history.
- People struggling with poverty, substance use, and mental health have been forced to live on the streets, in tents, unstable & unsafe.
- Our clients—our people—have some of the hardest times in finding any stable housing—even in times of “general prosperity.”
- It is even more desperate now.
- We need to do everything in our power to protect our clients’ housing & rights to housing.



Denying Public Benefits: Kicking People When They are Down

- Since 1996, federal law has prohibited people convicted of felony drug offenses from collecting cash assistance and food stamps.
 - Hey! We don't want people selling drugs to live, so let's take away any housing, cash, or food assistance—that will not make them desperate to sell drugs again!

THANKFULLY

This is not the law in Maine—not for EBT/SNAP (Supplemental Nutrition Assistance Program) or TANF (Temporary Aid to Needy Families).

HOWEVER—A person convicted of a drug felony may be forced to take a drug test to access TANF funding.

Punishing people and families for past criminal convictions for one member of the family seems super cool and logical and effective.



Where to turn with questions about benefits?



- Client's case manager or case worker.
- Department of Health & Human Services (Yikes!)
- Maine Equal Justice—wonderful organization that can assist people who are being unjustly denied benefits and who know the ins and outs of public benefit laws and policies in Maine better than anyone (definitely better than DHHS)
- NOTE: There are many states that prohibit even minimal food or cash assistance to people with felony drug convictions—it is important that if your client is from that state or planning to move to a state that you research the eligibility restrictions there.

“Social Death” & SORNA



Sex Offender Registration & Notification Act: SORNA

- Apart from imprisonment, one of the HARSHEST and most DAMNING “collateral” consequences of a criminal conviction.
- Marked as a pervert and predator for all the world to see. “Social death.”
- Your life will never be the same once you are labeled a sex offender.
- Many clients will tell you they will take a prison sentence on a violent felony before they agree to plead to a sex offense.
- Nothing brings out the pitchforks & torches like a community riled up about someone convicted of a sex offense.

Classifications of Registrants in Maine

- Tier 1: 10-year registry. Annual verification. Class E or D misdemeanor offenses, including Unlawful Sexual Contact. (Or *attempted* Class C crime) (Note: Unlawful Sexual Touching, Class D, is typically not a registrable offense, but the “sex” language of the charge can also be devastating for someone even without the SORNA requirements.)
- Tier 2: 25-year registry. 6-month verification. Class C felony offenses, or attempted Class B offenses.
- Tier 3: Lifetime registry. 90-day verification. Class A and B felony convictions, or two or more Tier 1 or Tier 2 convictions. (See sub. 7)

• **CHECK, CHECK, AND CHECK AGAIN!**

Practice Tip: Avoid sex crime convictions at all costs

- If the case against your client is strong but there is quite a lot of mitigation, or;
- If the case against your client is problematic but risky; or
- If a sex-based risk assessment comes back favorable;
- Consider an extended deferred disposition (for the “right” client):
 - Again, the downside of a sex crimes conviction and the SORNA requirements are so devastating that depending on your client’s goals, two years of conditions, counseling, and more might be exactly the resolution for them.
 - Not for every client or every situation
 - Trials are brutal—but can be winnable

Brief Side Note re: SORNA & Juvenile Adjudications

- In Maine, unless a young person is prosecuted and convicted as an adult of a registrable sex crime, they do NOT have to register with Maine's SORNA.
- HOWEVER, a juvenile adjudication that would carry a lifetime duty to register as a sex offender if that juvenile had been prosecuted as an adult will require that juvenile to register as a lifetime sex offender in no less than 34 states—including in Florida, if they are planning on going there for 7 days or more.
- Very few black & white rules in the law, but this is one of them:
 - **AVOID SEX-BASED ADJUDICATIONS FOR JUVENILE CLIENTS IF AN WHENEVER POSSIBLE. EDUCATE THE PROSECUTOR.**

Student Aid & Educational Opportunities



Federal Student Aid: Good developments!

- Drug convictions no longer affect federal student aid eligibility! This is HUUUUUUUUUUUUUGE!!!!
- As of July 1, 2023, even if you are subject to an involuntary civil commitment for a sexual offense, you may qualify for a Federal Pell Grant.
- As of July 1, 2023, if you're confined or incarcerated in a federal or state facility, the following applies to you:
 - You may be eligible for a Federal Pell Grant if you are enrolled in an approved prison education program.
 - You can get Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS) if you qualify.
 - You can't get federal student loans.



Still can be rejected based on criminal record



- No school, public or private, will be forced into accepting an applicant into a post-secondary program despite their criminal record.
- Many schools require a “box check” indicating a criminal conviction on the initial application.
- Schools can use their discretion in deciding to admit an applicant with criminal convictions, but again, having a criminal record does not make someone a member of a discrete class--worthy of heightened protection.
- As should be apparent, a criminal conviction makes things that much harder for someone looking to pursue higher education.

Employment & Licensing



“Ban the Box” for Maine State Government Jobs

- In **2019** Maine enacted a law prohibiting questions about an individual’s criminal history on applications for employment for a position in State Government, “except when, due to the nature and requirements of the position, a person who has a criminal history may be disqualified from eligibility for the position.”
- Provision covers positions in the legislative, executive or judicial branch of State Government or a position with a quasi-independent state entity or public instrumentality of the State, but not “a school administrative unit, municipality, county or other political subdivision of the State.” [5 M.R.S. § 792](#) (2019)

“Ban the Box” in Initial Applications Generally

- In **2021** Maine enacted a ban-the-box law applicable to public and private employment (except for state employees covered by the 2019 ban-the-box law described below), prohibiting inquiry into a person’s criminal record until the person has been selected for an interview or been deemed otherwise qualified. [26 M.R.S. § 600-A \(2021\)](#).
- Certain positions are excepted, including those for which the law creates a presumption of disqualification for certain offenses, or otherwise bars hiring people with certain convictions.

Occupational Licensing & Criminal Convictions

- Maine limits consideration of conviction in determining eligibility for the granting of any occupational license, registration or permit issued by the State, placing stricter limits on less serious offenses and generally barring consideration of dated convictions.
- Under [5 M.R.S. § 5301](#)(1) (2022), licensing agencies **may** take into consideration criminal history record information from Maine or elsewhere relating to certain convictions that have not been set aside or for which a full and free pardon has not been granted, but “the existence of such information **shall not operate as an automatic bar** to being licensed, registered or permitted to practice any profession, trade or occupation.”

Licensing, Continued

- Section 5301(2) further limits consideration of certain minor convictions: convictions for which incarceration for less than a year is authorized may be considered only if the offense “directly relates” to the license, or if the offense involves dishonesty or false statement. Convictions of a sexual nature may be considered in connection with certain types of health care licenses.
- However, under § 5302 convictions specified in § 5301(2) may be taken into account if the licensing agency determines that the individual “has not been sufficiently rehabilitated to warrant the public trust.”
- In such event, the licensing agency “shall explicitly state in writing the reasons for a decision which prohibits the applicant, licensee, registrant or permit holder from practicing the profession, trade or occupation if that decision is based in whole or in part on conviction of any crime described in section 5301, subsection 2.”

Licensing, Part 3

- Section 5303 provides that licensing authorities may consider only recent convictions (within the last three or ten years, depending on the type of license sought, with a longer period for health care and law enforcement licenses).
- “Beyond the [3-year][10-year] period, ex-offender applicants or licensees with no additional convictions are to be considered in the same manner as applicants or licensees possessing no prior criminal record for the purposes of licensing decisions.” § 5303(1), (2)(A).
- There is no time limitation for consideration of an applicant’s or licensee’s conduct that gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action. §5303(1), (2)(B).

To Be Clear: Good Laws \neq Good Jobs



- Even if a person can be licensed following a criminal conviction, this does not guarantee them access to employment or give them any rights regarding retaining current employment.
- Although we have “banned the box” for initial rounds of application and hiring, there is nothing that requires a public or private agency to hire someone with any type of criminal conviction.
- Each additional conviction—particularly crimes involving dishonesty, felonies, and any sex offense—makes getting and keeping a job extremely difficult.

National Inventory of Collateral Consequences of Conviction

Collateral Consequences Inventory

Use the categories below to search and view details of policies relating to collateral consequences of a criminal conviction.

Disclaimer: The legal content of this site is updated alongside state legislative sessions and is current as of the date specified on the details page of each consequence. Note that some content may not yet be updated through the most recently completed legislative session in a state.

DESCRIPTION: Include Federal Consequences ? Export Clear Search

JURISDICTION ? × CONSEQUENCES ? × KEYWORDS ? OFFENSE TYPE ? DISCRETION ? DURATION ?

[1](#) [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [10](#)

[Next >>](#)

Matched 111 entries with 113 consequences

Title	Jurisdiction	Consequences	Keywords	Offense Type	Discretion	Duration
CMR 06-096-424 Suspend/deny/revoke certification as lead professional	Maine	Occupational & professional licensure & certification	Hazardous materials, pesticides, chemicals & waste	Other	Discretionary	Indefinite

A glimmer of hope: Sealing criminal records

- 2021 enactment: Sealing is now available for Class E misdemeanor crimes—except for sex offenses (of course!)
 - Client was 18 to 28 years old at the time of the offense.
 - 4 years have elapsed since satisfaction of sentence.
 - No new criminal convictions, deferred dispositions, or pending criminal charges—in Maine or elsewhere.
- 15 M.R.S. §§ 2261-2269 ([Post-Judgment Motion to Seal Criminal History Record](#))
- Next steps? Class D, C, and even B/A crimes. Eliminate age restrictions. Make misdemeanor sealing automatic.

Stigma: Fighting the narrative of “criminal”

“

”

**EACH OF US IS MORE
THAN THE WORST THING
WE’VE EVER DONE.**

– BRYAN STEVENSON

If you can't prevent the fire, empower your clients to be the Phoenix

“And god help you if you are a phoenix

And you dare to rise up from the ash

A thousand eyes will smolder with jealousy

While you are just flying past.”

~Ani Difranco



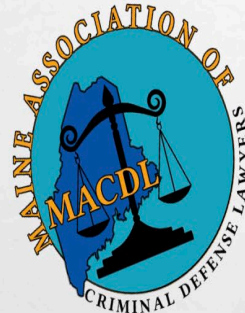
Thank you all so much!

- Please reach out to me as Resource Counsel with any/all questions about this or any other issue in adult criminal cases, appeals, and post-conviction review!
- Email tinanadeaulaw@gmail.com
- Text (207) 699-8287
- Make an appointment to discuss, either in person at 75 Pearl Street, Suite 430, Portland, ME 04101, or via phone call or Zoom.
- Happy to be of service to you all.
- Join MACDL: mainemacdl@gmail.com



See you at \$3 Deweys!

cheers!



MACDL HAPPY HOUR!

**WEDNESDAY, OCTOBER 25, 2023
5:30 P.M.-7:30 P.M.**

THREE DOLLAR DEWEYS (241 COMMERCIAL STREET, PORTLAND)

**MACDL MEMBERS, NACDL VISITORS & PRESENTERS, &
MCILS CONFERENCE ATTENDEES ARE ALL WELCOME!**

Free appetizers! Drink
specials for all! Live music!

Join us for some fun during
Admin Week!



For more information about this event and all things
MACDL, contact Executive Director Tina Nadeau at:
mainemacdl@gmail.com