

## **APPENDIX E**

### **POTENTIAL COLLATERAL CONSEQUENCES OF A CONVICTION FOR MISDEMEANOR DOMESTIC ASSAULT**

Carolyn Ham  
October 2003

Battered Women's Justice Project

<http://data.ipharos.com/bwjp/documents/CollateralConsequences.pdf>

#### **Future Criminal Liability**

In many states, a second or third incident of assault within a certain time period can be charged as a gross misdemeanor or felony.

#### **Housing**

Defendants in public housing may face eviction. While a misdemeanor conviction does not automatically lead to eviction, landlords offering public housing are required to include a term in the lease that provides "any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by people residing in the immediate vicinity of the premises . . . shall be cause for termination." Depending on the facts of the incident, a domestic assault could be grounds for eviction. Grounds for eviction can consist of proof of "criminal activity" by the preponderance of the evidence standard.

In addition, a Public Housing Authority (PHA) can deny admission to public housing to applicants if they have a history of criminal activity involving crimes of physical violence to people or property that would adversely affect the health safety and welfare of other tenants. Some local PHAs have defined criminal activity to include misdemeanors. Private landlords may also run a criminal history background check and based upon a conviction, refuse to rent to the defendant.

#### **Public Benefits**

Generally, a misdemeanor assault conviction will not result in the loss of federal public benefits. However, defendants incarcerated for more than 30 days lose their ability to collect old age benefits, survivor benefits or disability benefits while they are incarcerated.

Defendants who have outstanding felony warrants or felons who are in violation of probation or parole are ineligible for TANF, SSI and food stamps until those violations are resolved to the satisfaction of the probation or parole department. Moreover, some states have extended the prohibition to defendants with outstanding misdemeanor warrants. At least one state, Pennsylvania, prohibits defendants from collecting cash assistance or medical assistance if they owe fines, court costs or restitution, regardless of whether the payments are a condition of probation.

Defendants may also have difficulty meeting the TANF or food stamp work requirements if they are incarcerated or required to participate in treatment or groups that conflict with working hours.

### **Employment**

Certain professions such as child care, foster care, teaching and healthcare may prohibit anyone with an assault conviction from working in those professions.

Employers may run a criminal history background check and exclude the defendant from consideration due to the misdemeanor conviction.

Conviction may cause a person to be precluded from obtaining a license to practice in certain fields such as law, medicine, insurance, etc. If a licensed professional is convicted, he or she may be subject to disciplinary action such as suspension.

### **Possession of Firearms**

Under federal law, a defendant convicted of misdemeanor assault against a spouse or former spouse or cohabitant or former cohabitant may not possess firearms. State laws may have similar provisions. If carrying a firearm is a requirement of employment (as with security guards), convicted persons would be barred from such employment

### **Higher Education**

A misdemeanor assault conviction generally will not render a defendant ineligible for federal financial aid but a criminal record might impact his or her ability to be admitted to higher education facilities, depending on the educational facility's admission policy.

### **Custody**

A domestic assault conviction may trigger operation of a rebuttable presumption that the defendant is not fit to have custody or visitation with his or her children, and even in states without such presumptions, a conviction could create an obstacle to obtaining custody. Furthermore, in states which allow victims of domestic violence to opt out of mediation, conviction of a victim may undercut that victim's position that mediation is not appropriate.

### **Child Welfare**

Especially in states which define child maltreatment as including the exposure of a child to domestic violence, defendants could lose temporary or permanent custody of their children to the state.

If defendants are incarcerated for an extended period of time, they may face child welfare/ child protection services inquiries as to their ability to parent their children.

### **Spousal Support**

In California, a domestic assault conviction results in a rebuttable presumption that the defendant is not entitled to spousal support.

### **Protective Order**

In some states, a criminal conviction automatically means the victim can receive a protective order against the defendant.

### **Right to Travel**

If a defendant is on probation, she or he may lose the right to relocate for the term of the probation, which can confound job seeking or other activities.

### **Immigration**

A defendant who is not a citizen may be subject to removal from this country for a conviction for misdemeanor domestic assault or violation of a protection order if it involved credible threats of violence. This includes cases where adjudication of guilt has been withheld if the defendant admits sufficient facts to warrant a finding of guilt.

If a defendant is petitioning to become a lawful permanent resident, a conviction may disqualify her as lacking good moral character. This might even include continuances for dismissal.

### **Right to Vote**

Generally a misdemeanor conviction will not result in the loss of voting privileges or the right to serve on a jury, except some states may preclude defendants from voting during the time they are incarcerated.

A felony conviction, on the other hand, precludes a defendant who is incarcerated from voting in 48 states. Thirty-three states further prohibit felon from voting while on parole. Six states permanently deny felons the right to vote.

### **Ability to Adopt Children**

A felony conviction could preclude adoption.

---

<http://data.ipharos.com/bwjp/documents/CollateralConsequences.pdf>

Battered Women's Justice Project (BWJP) Criminal Justice Office on-line resources are available to grantees and non-grantees for public use.

Battered Women's Justice Project, 1-800-903-0111  
2104 Fourth Avenue South, Suite B  
Minneapolis, MN 55404  
1-800-903-0111, prompt 1    612-824-8965 (fax)  
E-mail: [crimjust@bwjp](mailto:crimjust@bwjp)    Website: [www.bwjp.org](http://www.bwjp.org)

*Funding for this project was made available through the U.S. Department of Health and Human Services, Grant # 90EV0248. The viewpoints contained in this publication are solely the responsibility of the author and do not represent the official views or policies of the Office of Community Services, and do not in any way constitute an endorsement by the U.S. Department of Health and Human Services.*