

REPORT TO THE GENERAL ASSEMBLY
OF THE STATE OF OHIO
RECOMMENDING RATIFICATION OF
“TRINA’S LAW”

JULY 28, 2003

Submitted by

The Center for Law and Justice
University of Cincinnati
College of Law
P.O. Box 210040
Cincinnati, OH 45221-0040
(513) 556-0107

INTRODUCTION

Ohio is in the minority of jurisdictions that does not allow the victim of a crime to use the felony conviction of the perpetrator as conclusive evidence that the criminal acts occurred in a subsequent civil case. This law exists in Ohio despite the fact that the benefits of allowing criminal convictions to have estoppel effect in a subsequent civil action outweigh the virtually non-existent risks.

A law allowing criminal convictions to estop relitigation of issues in a civil action would save time and judicial resources by avoiding the relitigation of issues that were conclusively established in a criminal action, as well as preventing the victim from spending time and money relitigating issues that were firmly established in the criminal action. The latter concern is especially clear in the case of Trina Hatchett. Ms. Hatchett was the victim of an attempted murder and is currently embroiled in a civil action with her attacker, who was already convicted of attacking her in a criminal proceeding. Ms. Hatchett, like many Ohio residents in her position, has unfortunately had to bear the burden of Ohio's minority position on this issue. She has watched in frustration as her attacker has claimed in the pending civil action that he is not guilty of the offense despite having already been convicted of the offense in a criminal forum, where the burden of proof was higher than in the pending civil case. Ohio's minority position on this issue has forced Ms. Hatchett to bear the burden and expense of relitigating her attacker's guilt—not only adding undue hardship and expense to her physical injuries, but wasting the resources of the judicial system as well.

This report explores the reasons why Ohio should adopt legislation that would allow criminal convictions to estop litigation of certain issues in a civil action. Part I explores the facts

of Ms. Hatchett's case. Part II discusses how Ohio currently uses criminal convictions in subsequent civil actions. Part III explains that ratification of legislation that would allow criminal convictions to have estoppel effect in subsequent civil actions would be valid. Part IV establishes the reasons for adopting a law that would allow criminal convictions to have estoppel effect in a civil action. Finally, Part V explores the appropriate scope of the proposed law.

DISCUSSION

I. THE FACTS OF MS. HATCHETT'S CASE

The facts of Trina Hatchett's case were obtained from The Cincinnati Post and The Cincinnati Enquirer, and from personal interviews with Trina Hatchett.¹ On November 23, 2001, Danny Williams walked into J. Alexander's restaurant in Cincinnati with a 9mm and a .45 caliber handgun. He sat down in a booth across from his ex-girlfriend, Trina Hatchett, and her dinner companion, Michael Smith. When the pair tried to leave, Williams pulled out the 9mm and shot Ms. Hatchett in the chest, narrowly missing her aorta. Mr. Smith then tackled Williams, knocking the 9mm out of his hand, at which point Williams lifted the .45 caliber handgun and fired at Mr. Smith, but missed. Williams then pointed the .45 caliber handgun at Ms. Hatchett and fired. Had she not slumped down at that exact moment, Williams would have shot Ms. Hatchett in the head. Williams then shot at Mr. Smith yet again as Smith attempted to flee, this time hitting him in the leg.

¹ http://www.enquirer.com/editions/2002/06/26/loc_man_gets_15_years_in.html (viewed May 29, 2003); <http://www.cincypost.com/2002/jun/26/will062602.html> (viewed May 30, 2003); <http://www.cincypost.com/2001/dec/04/bond120401.html> (viewed May 30, 2003); http://www.enquirer.com/editions/2001/11/27/loc_shooter_abused_her.html (viewed May 30, 2003).

Williams was charged with two counts of attempted murder. After a plea agreement was reached, Williams pled guilty to the two counts of attempted murder and was sentenced to fifteen years in prison.

Mr. Smith nearly lost his leg in the attack, and now must have an operation every five years to maintain his ability to walk. Ms. Hatchett suffered a nicked lung and three broken ribs. She has numerous medical bills, suffers from severe anguish and anxiety, and has permanent scarring and disability because of the wounds inflicted by Williams.

Ms. Hatchett has subsequently filed a civil suit in the Court of Common Pleas of Hamilton County, Ohio, which includes counts of assault and battery, intentional infliction of emotional distress, and punitive damages. She seeks actual damages in excess of \$50,000 and punitive damages in excess of \$50,000. Included in the calculation of Ms. Hatchett's actual damages is payment to recover full title to the house that she and the convicted perpetrator, Williams, jointly own. Williams still reaps the benefits of ownership while in prison. Williams now claims that the shooting was in self-defense in the civil suit, even though he has already pled guilty to attempted murder in the criminal proceeding. Ms. Hatchett is now in the frustrating position of having to reprove issues in her civil suit that were already decided in the criminal proceeding.

II. HOW OHIO CURRENTLY USES CRIMINAL CONVICTIONS IN SUBSEQUENT CIVIL ACTIONS

Collateral estoppel is a doctrine that prevents parties from relitigating issues that have already been decided. Its purpose is to promote judicial economy and the finality of judgments. The most important criteria when determining whether collateral estoppel applies in Ohio are: (1) the parties and the issues must be identical; (2) the particular issue must have been actually

litigated; and (3) the particular issue must have been actually decided.² The Supreme Court of Ohio, however, has ruled that the strict mutuality of parties requirement can be relaxed in some situations in the interest of justice.³

Bucking the national trend, Ohio remains one of only a handful of jurisdictions that does not allow a prior criminal conviction to estop relitigation of the same issue in a subsequent civil case. A discussion of Ohio law illustrating this principle will follow.

The primary rule in Ohio specifying how a plaintiff can use a criminal conviction in a subsequent action is Ohio Rule of Evidence 803(21), which states that “[e]vidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of no contest or the equivalent plea from another jurisdiction), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year” is admissible in a civil case as a hearsay exception “to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than accused.”⁴ In other words, Ohio Rule of Evidence 803(21) provides that evidence of a felony conviction is admissible in a subsequent civil suit, as a hearsay exception. The rule is silent, however, on the issue of whether or not such felony conviction precludes the perpetrator from relitigating guilt in the subsequent civil suit.⁵

² Goodson v. McDonough Power Equip. Inc., 443 N.E.2d 978, 981 (Ohio 1983) (setting forth these requirements and holding that issue of reasonableness of design in a civil action arising out of a tractor accident was not sufficiently identical to a similar issue in previous litigation to invoke collateral estoppel).

³ Gilbraith v. Hixson, 512 N.E.2d 956, 961 (Ohio 1987) (holding that father's action under parentage statute to establish nonexistence of parent-child relationship was barred by res-judicata effect of prior legitimation order and dissolution decree establishing paternity).

⁴ Ohio Evid. R. 803(21) (2003).

⁵ It should be noted that Ohio Rule of Evidence 803(21) is in conflict with O.R.C. 2307.60, which provides that no record of a criminal conviction, unless obtained by confession in open court, can be used in a civil action to recover damages for injuries to person or property.⁵ Ohio Evidence Rule 803(21), however, would supersede the statute under the provisions of Article IV, § 5(B), of the Ohio Constitution, which state that any rules in conflict with the procedural rules of the Ohio Supreme Court will be of no further effect. Ohio Const. Art. IV, § 5(B). *See infra* Part III.

Illustrative of how Ohio courts have interpreted Rule 803(21) is the Fourth Appellate District Court of Ohio's decision in Phillips v. Rayburn.⁶ In that case, the victim of a shooting and his wife filed an intentional tort action after the defendant was convicted of aggravated assault.⁷ The trial court entered summary judgment against the defendant because of his criminal conviction, and he appealed.⁸ The court on appeal agreed with the defendant that under Rule 803(21), the prior criminal conviction acts as *evidence* of his intent during the commission of the crime, but does not collaterally estop him from rearguing the issue since 803(21) is silent as to what *effect* the criminal conviction should have in the civil action.⁹ In so ruling, the court adhered to the Ohio common law rule that there must be mutuality of parties in order for collateral estoppel to apply.¹⁰ Because the plaintiffs were not parties to the prior criminal litigation (the prosecution rather than the victim in effect acted as the plaintiff in the criminal case), they could not avail themselves of the collateral estoppel doctrine in Ohio.¹¹

Likewise, in Vancamp v. Austintown Twp,¹² the Seventh Appellate District Court of Ohio held that a criminal conviction is not conclusive evidence, but only some evidence of the facts to be proven in a subsequent civil proceeding. In yet another case, Breckler v. Martin,¹³ the United States District Court for the Northern District of Ohio, applying Ohio law, held that an aggravated murder conviction was admissible as evidence in a subsequent civil proceeding, but did not stop the defendant from forcing the plaintiff to relitigate and reprove the issue.

⁶ 680 N.E.2d 1279, 1281 (Ohio App. 4 Dist. 1996).

⁷ Id.

⁸ Id.

⁹ Id. at 1283.

¹⁰ Id.

¹¹ Id. The court also expressed concerns about the differences in procedure between civil and criminal courts. In addition, the court questioned the defendant's incentive to fully litigate the criminal claim. These two factors weighed in the court's decision not to apply collateral estoppel. Id. at 1284.

¹² 2002 WL 925197, 2002 Ohio 1537 (7 Dist. Mar. 19, 2002) (holding that a masseuse's guilty plea to sexual acts which necessarily determined issue of whether the masseuse was an employee of a massage parlor was not conclusive evidence that the masseuse was an employee in a subsequent action to determine if the massage parlor should be re-licensed).

¹³ Breckler v. Martin, 2002 WL 1465761 (N.D. Ohio 2002).

In all of these cases, the plaintiffs were forced to relitigate a convicted defendant's guilt because, in part, the "mutuality of parties" requirement was missing in each of the cases. Because the plaintiffs in the subsequent civil suit were not parties to the prior criminal suit in which guilt/liability was established, the courts believed that collateral estoppel could not be enforced.

As stated *supra*, however, the Ohio Supreme Court has held that the mutuality of parties requirement can be relaxed where justice so requires. Indeed, this requirement has already been relaxed by the Ninth Appellate District Court of Ohio in the context of a subsequent civil case involving an intentional acts exclusion in an insurance policy. In Allstate Insurance Company v. Cole, the defendant shot one of his friends while playing with a gun.¹⁴ He was convicted of involuntary manslaughter for his reckless conduct that led to the death. The parents of the victim then filed a wrongful death suit against him.¹⁵ At the time of the shooting, the defendant was covered under a homeowner's insurance policy that might have applied since the death occurred at the defendant's home.¹⁶ The insurance company, Allstate, then filed a declaratory judgment action against the defendant seeking to be excluded from liability because the defendant's insurance policy with Allstate had a clause excluding the insurance company from liability for damages caused by criminal acts of the policy holder.¹⁷ Relying on this clause, Allstate moved for summary judgment on the ground that the defendant's involuntary manslaughter conviction estopped him from relitigating whether the death occurred as a result of his criminal act. The trial court agreed, despite the fact that Allstate was not a party to the prior criminal action, and granted summary judgment. On appeal, the Ninth Appellate District Court

¹⁴ 717 N.E.2d 816, 817 (Ohio App. 9 Dist. 1998).

¹⁵ Id.

¹⁶ Id. at 818.

¹⁷ Id.

of Ohio held that the defendant's conviction of involuntary manslaughter was enough to establish the recklessness required to trigger the exclusion clause.

III. LEGISLATION ALLOWING A CRIMINAL CONVICTION TO HAVE ESTOPPEL EFFECT IN A CIVIL ACTION WOULD BE VALID

Article IV §5 (B) of the Ohio Constitution states that any rules that conflict with the procedural rules of the Ohio Supreme Court will be of no further affect.¹⁸ In State v. Heyden,¹⁹ the Ninth Appellate District Court of Ohio interpreted this constitutional provision to mean that when a court is faced with deciding whether a procedural rule of the Supreme Court or a legislative statute is applicable, it must first decide whether the two are in conflict. If no conflict exists, then both the rule and statute are applicable, but if a conflict exists, then the statute would be of no further effect if the conflict were over a procedural matter.²⁰ Therefore, if the Ohio General Assembly were to pass legislation bringing Ohio in line with the majority of states on this issue, it would need to first make sure that such a statute would not conflict with Ohio Rule of Evidence 803(21). As set forth below, such a statute would be valid and enforceable because it would not conflict with Rule 803(21).

Instructive on the issue of when a statute conflicts with a procedural rule of the Ohio Supreme Court, such as a rule of evidence, are the cases of State v. Heyden²¹ and State v. Tate.²² The Ninth Appellate District Court of Ohio in Heyden was faced with a rule of criminal procedure which stated that arraignment might *immediately* follow service of an indictment on the one hand, and on the other hand, a statute which mandated that one day must pass between

¹⁸ Ohio Const. Art. IV, § 5(B).

¹⁹ 610 N.E.2d 1067, 169 (Ohio App. 9 Dist. 1992).

²⁰ Id.

²¹ 610 N.E.2d 1067, 169 (Ohio App. 9 Dist. 1992).

²² 391 N.E.2d 738, 740 (Ohio 1979).

service on an indictment and arraignment on that indictment.²³ Obviously, a statute which commands that one day must pass after service on an indictment before the defendant can be arraigned on that indictment is in direct conflict with a rule of the Ohio Supreme Court that allows for immediate arraignment after service. The two simply cannot co-exist together, as they would mandate diametrically opposing results in a case where arraignment occurred, for example, eight hours following service. Therefore, because the statute in question conflicted with a rule of the Ohio Supreme Court, it was invalid under Article IV §5 (B) of the Ohio Constitution.²⁴

In State v. Tate, on the other hand, the Supreme Court of Ohio decided that a statute and a procedural rule of the Ohio Supreme Court were not in conflict.²⁵ The procedural rule in question required the waiver of the right to a trial by jury in serious offense cases to be in writing.²⁶ The statute, however, required a waiver of a trial by jury to be in writing in all criminal cases, including both serious and petty offenses.²⁷ The Court decided that the two provisions were not in conflict, since the statute merely granted additional protection and went beyond the requirements of the procedural rule without conflicting with the procedural rule's mission, effect or purpose.²⁸

Legislation for “Trina’s Law” promulgated by the General Assembly would have to be drafted in such a way as to not conflict with Ohio Rule of Evidence 803(21). This could easily be accomplished. Rule 803(21) states merely that a prior criminal conviction is admissible in a subsequent civil case; it simply does not speak to the issue of whether or not it should have

²³ Id. at 170.

²⁴ Id.

²⁵ 391 N.E.2d at 740.

²⁶ Id.

²⁷ Id.

²⁸ Id.

preclusive effect in that subsequent civil litigation. Trina's Law, therefore, like the statute in Tate, would go beyond 803(21), and would provide *additional* uses for a prior criminal conviction in a subsequent civil case without in any way undermining or conflicting with Rule 803(21). As a result, the matter would be controlled by the Tate decision, and Trina's Law would be valid and enforceable. Trina's Law would peacefully co-exist with Rule 803(21), and the two provisions, like in Tate, would never mandate conflicting results in application.

IV. THE REASONS FOR ADOPTING A LAW THAT WOULD GIVE CRIMINAL CONVICTIONS ESTOPPEL EFFECT

There are compelling reasons to allow criminal convictions after trial and pleas of guilty to estop a convicted party from relitigating issues in a subsequent civil action. The primary reason is that preclusion can save time and judicial resources by avoiding the relitigation of issues that were conclusively established in a preceding criminal trial.²⁹ Furthermore, the federal government and forty-one states,³⁰ as well as the *Restatement (Second) of Judgments*,³¹ allow criminal convictions to collaterally estop relitigation of issues decided in a previous criminal action, and the same law in Ohio would bring Ohio in line with this trend. In addition, precluding litigation of an issue proven in a criminal trial should not raise concerns of fairness or equity, because of the immense safeguards that are provided to the defendant in a criminal trial, including proof beyond a reasonable doubt, and a unanimous jury verdict.³²

Another issue to consider is that it is simply unfair and unreasonable to make the victim/plaintiff spend time and money to relitigate issues that have already been decided in a

²⁹ Allan D. Vestal, *Issue Preclusion and Criminal Prosecutions*, 65 Iowa L.Rev. 281, 341 (1980).

³⁰ For a more complete description of the stance of the federal government and the respective states on whether criminal convictions can be used in a subsequent civil trial, consult *infra* appendix 1-2.

³¹ *Restatement (Second) of Judgments* § 85 (1982); David L. Shapiro, *Should a Guilty Plea Have Preclusive Effect?*, 70 Iowa L. Rev. 27, 28-29 (1984).

³² Dettmann v. Kruckenburgh, 613 N.W.2d 238, 248 (Iowa 2000).

court with a higher burden of proof. This is especially clear in Ms. Hatchett's case. There is a limited amount of pecuniary compensation that Ms. Hatchett can receive for the financial and emotional losses she has suffered, and the extra time and cost of re-litigating issues that have already been decided in the criminal forum is one extra burden that she should not have to bear.

V. THE APPROPRIATE SCOPE OF THE PROPOSED LAW

In order to maintain fairness to the criminal defendant the scope of criminal convictions that have a collateral estoppel effect in subsequent civil litigation should be limited to serious offenses. Misdemeanor and minor convictions, such as traffic violations, should not have a preclusive effect because the incentive for the defendant to fully litigate during the criminal proceedings may be little to none. In those situations, it may be more efficient to plead guilty rather than incur the costs of litigation and spend the time involved in a trial. However, it is generally thought that those charged with a felony have substantial incentive to fully litigate the claim during the criminal trial, so that a civil trial based on that conviction would not deprive them of any opportunities. Thus, the scope of the offenses covered by a statute allowing collateral estoppel should be limited to felonies, provided that all of the general elements of collateral estoppel are met.³³

A plea of guilty, as opposed to a conviction after trial, holds unique problems that must be addressed. When a criminal defendant is proven guilty of a felony after a trial, there is little question that he had the incentive to litigate in the criminal proceeding. However, when a defendant pleads guilty to a felony, it is more difficult to determine if he had the incentive to litigate.

³³ Ray B. Schlegel, *Zinger v. Terrell: The Collateral Estoppel Effect of Criminal Judgments in Subsequent Civil Litigation; New Law in Arkansas and the Questions Unanswered*, 54 Ark. L. Rev. 127, 144 (2001).

In his article entitled *Should a Guilty Plea have Preclusive Effect?*, Professor David L. Shapiro presents the split of authority regarding whether a guilty plea should estop relitigation of issues in a subsequent civil action.³⁴ Many courts see a guilty plea as an admission of the facts of the crime in a courtroom setting. A defendant is afforded many procedural safeguards to ensure that a plea of guilty is made voluntarily and intelligently. One can easily understand that with all the procedural protections that our system enjoys, a guilty plea is in many instances more reliable than a jury verdict after a controversial trial.

However, when considering the weight a guilty plea should receive, it is proper to take into account the effect of the plea bargaining process. “A defendant may choose the relative certainty of a mild penalty over the uncertain range of outcomes from, say, acquittal to capital punishment.”³⁵ The likelihood of an innocent person pleading guilty can significantly increase if the defendant feels that he or she has no other favorable options.³⁶ In cases where the defendant is trying to protect others from prosecution or avoid the costs of litigation, an innocent person might have an incentive to plead guilty.³⁷ A civil court will only further aggrieve a defendant that finds himself in such a position if they hold him liable in a subsequent civil action for choosing the best alternative available to him or her.

The *Restatement (Second) of Judgments* provides that a criminal defendant should be precluded from relitigating an issue in a subsequent civil action with a third party,³⁸ “unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue.”³⁹ This rule could

³⁴ Shapiro, *supra* n. 31, at 28.

³⁵ *Id.* at 39.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Restatement (Second) of Judgments* § 85

³⁹ *Restatement (Second) of Judgments* § 29 (1982).

safely bring guilty pleas into the realm of issue preclusion while maintaining an out for those who may have been wronged by the system if they can show that they lacked a full opportunity or incentive to litigate.⁴⁰ This rule would also serve the overriding public policies of judicial economy and the finality of judgments.

CONCLUSION

For the foregoing reasons, it is respectfully recommended that the General Assembly of the State of Ohio pass a joint resolution ratifying "Trina's Law."

Respectfully submitted,

THE CENTER FOR LAW AND JUSTICE

Megan Maag, Law Student, Author

Adam Tomakich, Law Student, Author

Mark Godsey, Assistant Professor of Law and Faculty Director, Center for Law and Justice
(513) 556-0107; mark.godsey@uc.edu

John Cranley, Lecturer in Law and Administrative Director, Center for Law and Justice
(513) 556-3474; john.cranley@uc.edu

Gabriel J. Chin, former Rufus King Professor of Law at the University of Cincinnati College of Law; now Professor of Law at the University of Arizona College of Law

⁴⁰ See Vestal, *supra* note 29 at 325-32.

APPENDIX 1

Stance of the Federal Government and the Majority States¹

Federal Government

“A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.” 18 U.S.C.A. § 3664(l) (West 2003).

Alabama

“If conviction in a criminal trial necessarily decides the issue of a defendant's liability for pecuniary damages for a victim, that issue is conclusively determined as to the defendant, if it is involved in a subsequent civil action.” Ala. Code § 15-18-75 (1975).

Alaska

Scott v. Robertson, 583 P.2d 188 (Alaska 1978); collateral estoppel applies in a subsequent civil case if: (1) the prior conviction is for a serious criminal offense; (2) the defendant in fact had a full and fair hearing; and (3) it is shown that the issue on which the judgment is offered was necessarily decided in the previous trial. Id. at 191-192.

Arizona

The state legislature in 1986 enacted A.R.S. § 13-1807 (2003), which provides as follows: "A defendant convicted in a criminal proceeding is precluded from subsequently denying in any civil proceeding the essential allegations of the criminal offense of which he was adjudged guilty, including judgments of guilt resulting from no contest pleas."

Arkansas

A murder conviction collaterally estopped the relitigation of guilt in a subsequent civil suit. Zinger v. Terrel, 985 W.2d 737, 741 (Arkansas 1999).

California

A defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal action. Teitelbaum Furs, Inc. v. Dominion Ins. Co., 21 Cal.Rptr. 671 (Cal. App. 1962).

Colorado

"A final judgment or decree rendered in favor of the People in any criminal proceeding under this article shall estop the defendant in any subsequent civil action or proceeding as to all matters as to which such judgment or decree would be an estoppel as between the parties." C.R.S.A. § 18-17-106(8) (West 2003).

¹ Some states do not have legislative statutes or Supreme Court decisions pronouncing their stance on the issue. Where a legislative statute or Supreme Court decision is not available, lower court decisions are used.

Connecticut

Mutuality of parties is no longer required to invoke collateral estoppel and, since the party was convicted of first-degree manslaughter in a criminal court, the plaintiff could collateral estop relitigation in a subsequent civil action. Aetna Cas. & Sur. Co. v. Jones, 596 A.2d 414, 425 (Conn. 1991).

Delaware

Delaware Superior Court Civil Rule 71.3(f) provides that a defendant "convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense ... in any proceeding brought pursuant to this rule, regardless of the pendency of an appeal from that conviction."

Florida

"The conviction of a defendant for an offense involving the Act giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent civil proceeding." Fla. St. Ann. 775.089(8) (2003).

Georgia

A defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal action. Consolidated Management Services, Inc. v. Halligan, 368 S.E.2d 148 (Ga. App. 1988).

Hawaii

A defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal action. Tradewind Ins. Co., Ltd. v. Stout, 938 P.2d 1196 (Hawaii App. 1997).

Idaho

Collateral estoppel bars relitigation in a civil proceeding of issue determined in a criminal proceeding in which party sought to be estopped had full and fair opportunity to litigate that issue. Anderson v. City of Pocatello, 731 P.2d 171, 179 (Idaho 1986).

Illinois

Estoppel effect may be accorded to a prior criminal conviction in an appropriate civil case; differences between civil and criminal litigation militate, if anything, in favor of according estoppel effect to criminal convictions because of the greater safeguards in favor of their reliability. American Family Mut. Ins. Co. v. Savickas, 739 N.E.2d 445, 449 (Ill. 2000).

Indiana

A defendant convicted in a criminal proceeding is precluded from denying the essential allegations of the criminal offense in a subsequent civil action. Doe v. Tobias, 700 N.E.2d 796 (Ind.App. 1998).

Iowa

A validly entered and accepted guilty plea precludes a criminal defendant from relitigating essential elements of the criminal offense in a later civil case arising out of the same transaction or incident. Dettmann v. Kruckenberg, 613 N.W.2d 238, 245 (Iowa 2000).

Kentucky

A defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal action. Gossage v. Roberts, 904 S.W.2d 246 (Ky.App. 1995).

Louisiana

“Conviction of an offender of a crime giving rise to the application for reparations under this Chapter shall be conclusive evidence that the crime was committed.” La. Rev. St. § 46:1809(2) (2003).

Maine

Prior criminal conviction conclusively establishes all facts essential to final judgment of conviction; therefore, final judgment of conviction in criminal case is preclusive in favor of third party in subsequent civil action against defendant in that criminal case. Butler v. Mooers, 771 A.2d 1034, 1037 (Me. 2001).

Massachusetts

In Aetna Casualty & Surety Co. v. Niziolek, 481 N.E.2d 1356, 1360 (Mass.1985), Massachusetts adopted the rule that "a party to a civil action against a former criminal defendant may invoke the doctrine of collateral estoppel to preclude the criminal defendant from relitigating an issue decided in the criminal prosecution."

Michigan

“A defendant convicted in a criminal proceeding is estopped from subsequently denying in a civil action the essential allegations of the criminal offense of which he or she was convicted.” Mich. Comp. Laws Ann. § 750.159q (West 2003).

Minnesota

Criminal convictions may be used as collateral estoppel in subsequent civil litigation where there was an actual conviction, and the criminal is trying to profit from his own crime in the subsequent civil litigation. Transamerica Ins. Co. v. Samuels, 369 N.W.2d 587, 588 (Minn. App. 1985).

Mississippi

A defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal action. Jordan v. McKenna, 573 So.2d 1371 (Miss. 1990).

Missouri

Guilty plea collaterally estopped relitigation of whether a stabbing was intentional or willful in a subsequent civil action. James v. Paul, 49 S.W.3d 678, 694 (Mo. 2001).

Nevada

A final judgment or decree rendered in favor of the state in a criminal proceeding for racketeering arising out of the same act, transaction or occurrence estops the defendant in a subsequent civil action from denying the essential allegations of the criminal offense. Nev. Rev. Stat. Ann. § 453.5533(2) (2002).

New Hampshire

Earlier criminal judgment can preclude party to criminal prosecution from relitigating contested issue of fact resolved in such prosecution in a later civil proceeding if party enjoyed full and fair opportunity to, and actually did, litigate issue in criminal prosecution. Hopps v. Utica Mut. Ins. Co., 506 A.2d 294, 297 (N.H. 1985).

New York

"An issue decided in a criminal proceeding may be given preclusive effect in a subsequent civil action." Pahl v. Grenier, 279 A.D.2d 882, 883 (N.Y.A.D. 3 Dept. 2001).

North Carolina

A defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial Brower v. Killens, 472 S.E.2d 33 (N.C. App. 1996); Burton v. City of Durham, 457 S.E.2d 329 (N.C. App. 1995).

North Dakota

Modern rule gave res judicata effect to criminal convictions to prevent relitigation in a later civil proceeding. Ohio Cas. Ins. Co. v. Clark, 583 N.W.2d 377, 382 (N.D. 1998).

Oklahoma

Evidence of a final judgment or a plea of guilty by a person convicted of a crime punishable by death or imprisonment in excess of one year is not excluded as hearsay, and that such evidence may be used to prove any fact to sustain a judgment. Ok. St. Ann. 1981 § 2803(22) (West 2003).

Oregon

A criminal conviction can have preclusive effect in a subsequent civil action even if the conviction was based on a plea of guilty. State Farm Fire and Cas. Co. v. Sallak, 914 P.2d 697, 700 (Or. App. 1996).

Pennsylvania

A defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal action. Krystal Jeep Eagle, Inc. v. Bureau of Professional and Occupational Affairs, 725 A.2d 846 (Pa Cmwlth. 1999).

Rhode Island

Plea of guilty did not prevent collateral estoppel in a subsequent civil action. Silveira v. Santos, 490 A.2d 969, 973 (R.I. 1985).

South Carolina

Mutuality of parties is no longer a requirement in asserting collateral estoppel of a criminal conviction in a subsequent civil suit. Doe v. Doe, 551 S.E.2d 257, 259 (S.C. 2001).

Tennessee

Criminal conviction by jury is conclusive on issue and, thus, acts as collateral estoppel in subsequent civil trial. Ali v. Moore, 984 S.W.2d 284 (Tenn. App. 1998).

Texas

A defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal action. Petta v. Rivera, 985 S.W.2d 199 (Tex. App. 1998).

Utah

"A final judgment or decree rendered in favor of the state or a county in any criminal proceeding brought by this state or a county shall preclude the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding."
U.C.A. 1953 § 76-10-1607 (2002).

Washington

"A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant." Wash. Rev. Code 9A.82.100(6) (2003).

West Virginia

A plea of guilty is sufficient for allowing criminal judgments to be used as collateral estoppel in subsequent civil litigation. State ex rel. Leach v. Schlaegel, 447 S.E.2d 1, 4 (W.Va. 1994).

Wisconsin

"An issue fully litigated in a criminal proceeding is not conclusive in a subsequent proceeding against the defendant's parents unless they were in privity with the defendant or had sufficient identity of interests with the defendant so as to have had an opportunity to fully and fairly litigate the issues." Paige K.B. ex rel. Peterson v. Steven G.B., 594 N.W.2d 370, 380 (Wis. 1999).

Wyoming

Collateral estoppel was appropriate because issues in the criminal case were the same issues in the civil case. Worman v. Carver, 44 P.3d 82, 86 (Wyo. 2002).

Appendix 2

Stance of the Minority States¹

Kansas

When relevant, the plea of guilty to that charge may be admitted into evidence in a subsequent civil action. Criminal convictions after trial cannot be used as evidence as an admission in a subsequent civil case. Patrons Mut. Ins. Ass'n v. Harmon, 732 P.2d 741 (Kan 1987).

Maryland

“A criminal conviction is not conclusive of the facts behind it in a subsequent civil proceeding, and, indeed, the conviction is ordinarily not even admissible in the civil action as evidence of the underlying facts.” Eagan v. Calhoun, 347 Md. 72, 86 (Md. 1997).

Montana

The findings in the sentencing hearing and the fact that restitution was required or paid are not admissible as evidence in a separate civil action and have no legal effect on the merits of a separate civil action. Mont. Code Ann. § 46-18-249 (2003).

Nebraska

“Doctrines of res judicata and collateral estoppel are not applicable when burden of persuasion is different in subsequent proceeding.” State v. Yelli, 530 N.W.2d 250, 254 (Neb.1995).

New Jersey

A final judgment rendered in favor of the State in any criminal proceedings shall estop the defendant from denying the same conduct in any civil action brought only by the Attorney general. N.J. Stat. Ann. § 2C:21-28(a) (2003).

New Mexico

A criminal conviction does not establish the truth of facts behind it in a subsequent civil proceeding. In re Forfeiture of Fourteen Thousand Six Hundred Thirty Nine Dollars (\$14,639) in U.S. Currency in Various Denominations and Two (2) Digital Pagers, 902 P.2d 563 (N.M. App. 1995).

South Dakota

Conviction of a criminal offense for the same incident leading to the charges only of killing or taking of animals is prima facie evidence of the defendant's civil liability. S.D. Codified Laws § 41-1-5.2 (2003).

¹ Some states do not have legislative statutes or Supreme Court decisions pronouncing their stance on the issue. Where a legislative statute or Supreme Court decision is not available, lower court decisions are used.

Vermont

A plea of guilty can be admitted into evidence in civil and criminal trials. VT. R. RCRP Rule 11(e) (2002).

Virginia

As a general rule, judgment of conviction or acquittal in criminal prosecution does not establish, in subsequent civil action, the truth of facts on which it was rendered, or constitute bar to subsequent civil lawsuit based on offense of which party stands convicted or acquitted. Godbolt v. Brawley, 463 S.E.2d 657 (Va. 1995).

“TRINA’S LAW”

PROPOSED AMENDMANT TO O.R.C. 2307.60¹

A felony judgment in favor of the prosecuting authority is preclusive in favor of a third person in a civil action against the defendant in the criminal prosecution unless the fact that he lacked a full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue. The circumstances to which consideration should be given are whether:

(1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action; or

(2) The issue is one of law and (a) the two actions involve claims that are substantially unrelated, or (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws; or

(3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them; or

(4) The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary has a significantly heavier burden than he had in the first action; or

(5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

(6) Treating the issue as conclusively determined would be incompatible with an applicable scheme of administering the remedies in the actions involved;

(7) The forum in the second action affords the party against whom preclusion is asserted procedural opportunities in the presentation and determination of the issue that were not available in the first action and could likely result in the issue being differently determined;

(8) The person seeking to invoke favorable preclusion, or to avoid unfavorable preclusion, could have affected joinder in the first action between himself and his present adversary;

¹ Taken from *Restatement (Second) of Judgments* §§ 28-29 (1982).

(9) The determination relied on as preclusive was itself inconsistent with another determination of the same issue;

(10) The prior determination may have been affected by relationships among the parties to the first action that are not present in the subsequent action, or apparently was based on a compromise verdict or finding;

(11) Treating the issue as conclusively determined might complicate determination of issues in the subsequent action or prejudice the interests of another party thereto;

(12) The issue is one of law and treating it as conclusively determined would inappropriately foreclose opportunity for obtaining reconsideration of the legal rule upon which it was based;

(13) Other compelling circumstances make it appropriate that the party be permitted to relitigate the issue.