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Tuesday, June 2, 2020

Geoffrey Burkhart

Executive Director, Texas Indigent Defense Commission

Mr. Burkhart comes to the Texas Indigent Defense Commission from the American Bar Association (ABA), where he served as the first Deputy Director and Counsel to the ABA Center for Innovation. He also helped lead the ABA's indigent defense reform efforts as Project Director and Counsel to the ABA Standing Committee on Legal Aid and Indigent Defendants. Mr. Burkhart previously worked as an Assistant Appellate Defender at the Illinois Office of the State Appellate Defender. There, he represented clients in homicide, sexual assault, and other serious felony cases. He also worked at a law firm, served as a law clerk to Justice James Epstein of the Illinois Appellate Court, and taught Appellate Advocacy and Judicial & Scholarly Writing at Loyola University Chicago School of Law. Born and raised in Kentucky, Mr. Burkhart achieved the rank of Eagle Scout and earned his bachelor's degree at Xavier University, his master's degree at Loyola University Chicago, and his juris doctor at DePaul University College of Law, where he served as Editor in Chief of the DePaul Law Review. He frequently writes and speaks about criminal justice.

President's Commission on Law Enforcement and the Administration of Justice

Panel: The Role of Public Defenders

June 2, 2020

Written Testimony of Geoffrey Burkhart,
Executive Director, Texas Indigent Defense Commission

I am honored to testify before this Commission. My testimony will focus on three things:

I. Why America Cares about Public Defense

II. What's Wrong with American Public Defense

III. What This Commission Can Do

If I or the Texas Indigent Defense Commission can be of any further use to this body, please let me know.

I. Why America Cares about Public Defense

Americans care about public defense because it affects them directly: half of America has seen a family member incarcerated, and most relied on public defense.[1]

If none of your family has been incarcerated, consider this: when your spouse is ill, your first question isn't about MRIs, billing software, or prescriptions—it is, *does she have a good doctor?* Similarly, when your spouse is arrested, your first question isn't about search and seizure, statutes of limitations, or the rule against hearsay—it is, *does she have a good attorney?*

Ultimately, public defense affects all Americans, because it shapes things we care deeply about: public safety, fairness, and taxpayer dollars.

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[1] Christal Hayes, USA Today, *'This isn't just numbers – but lives': Half of Americans have family members who've been incarcerated,* usatoday.com/story/news/politics/2018/12/06/half-americans-have-family-who-have-been-jailed-new-study-shows/2206521002/; *see also BJS Special Report: Defense Counsel in Criminal Cases* (2000), bjs.gov/content/pub/pdf/dccc.pdf (82% of state-level felony defendants are were represented by public defense in 75 largest counties). *See also Americans' Views on Public Defenders and the Right to Counsel: National Public Opinion Survey Conducted for the Right to Counsel National Campaign* (2017), rtcnationalcampaign.org/core-messaging.

A. Public Safety

Public defenders help ensure public safety by interrupting the cycle of recidivism. First, public defenders intervene in cases early to identify persons who can be safely diverted from jail.[2] Keeping low-risk persons out of jail greatly lowers recidivism rates.[3]

Public defenders also find alternatives to incarceration. As Attorney General Barr observes, our criminal justice system isn't the solution to drug addiction, mental illness, or homelessness.[4] Yet our jails hold more persons with mental health and substance abuse issues than any other public institution.[5] In Texas alone, 34% of inmates have a mental health need, and the majority have substance abuse problems.[6] Public defenders connect clients with mental health, substance abuse, and homelessness services, resolving underlying causes of criminality and keeping the public safe.[7]

Finally, public defenders prevent wrongful conviction and disproportionate sentencing that can lead not only to lifelong criminal records, fines and fees, and collateral consequences, but also to greater recidivism.[8]

B. Fairness

Public defenders are also key to a fair justice system. The right to an attorney is a threshold right that helps protect all other constitutional rights. Once appointed, public defenders raise constitutional issues, argue evidentiary matters, and ensure that the government meets its burden, all while building public trust in our system's fairness.

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[2] *See Attachment*, *Public Defender Primer: Research on Public Defenders* (Kaufman County, TX, defenders reduced jail time by 113 days in felonies).
[3] *The Hidden Costs of Pretrial Detention* (2013), https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf ("When held 2-3 days, low-risk defendants are almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours.")
[4] Attorney General William Barr, *Implementation Memorandum*(2020), https://www.justice.gov/ag/page/file/1236906/download.
[5] https://www.texasstateofmind.org/focus/smart-justice/
[6] *See Meadows Mental Health Policy Institute* (2020), https://www.texasstateofmind.org/focus/smart-justice/
[7] *Texas Mental Health Defender Programs* (2018), http://www.tidc.texas.gov/media/58014/tidc_mhdefenders_2018.pdf (Bexar County, Texas defenders increased pretrial release and bond compliance rates for defendants with mental illness).
[8] U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* (2019), https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf; *See also* Attachment, *Public Defender Primer: Research on Public Defenders* (Harris County, TX, defenders' clients with mental illness were five times as likely to have their cases dismissed).

Public defenders also help ensure that neither money nor influence determines a case's outcome and that all persons are treated equally under the law. When we can show that procedures and outcomes are fair, public trust grows commensurately.[9]

C. Taxpayer Dollars

Public defense is money well spent. Public defenders can reduce incarceration costs while helping to ensure public safety.[10] In New York, for instance, researchers found that holistic public defense prevented 1 million days of incarceration and saved taxpayers $160 million, all without endangering public safety.[11] Likewise, in Fort Bend, Texas, public defenders saved over $2,200 per case in jail costs.[12] These are not outliers. Study after study has shown public defenders deliver jail bed savings, prison bed savings, and more efficient justice administration.[13] Put simply, upfront investment can save taxpayer dollars downstream.

II. What's Wrong with American Public Defense

As Attorney General Barr observes, public trust in our justice system has waned.[14] By failing to effectively represent their clients, underfunded, undertrained, or overloaded public defenders often add to public distrust.

But public defense faces a far more basic problem: more than half of American counties don't have a public defender.[15] Instead, they rely on "non-systems," in which unsupervised attorneys take cases on an ad hoc basis, often for a flat fee. [16] These models offer no structure, no supervision, and little incentive to provide effective representation.[17]

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[9] Tom R. Tyler, Why People Obey the Law (2006). See Attachment, *Public Defender Primer: Research on Public Defenders* (85% of Fort Bend County, TX, defenders' clients were satisfied with their representation).

[10] James M. Anderson, Maya Buenaventura, and Paul Heaton, *Holistic Representation: An Innovative Approach to Defending Poor Clients Can Reduce Incarceration and Save Taxpayer Dollars* (2019), https://www.rand.org/pubs/research_briefs/RB10050.html.

[11] *Id.*

[12] See Attachment, *Public Defender Primer: Research on Public Defenders* (Fort Bend County, TX, defenders saved over $2,200 per case in jail costs for misdemeanors).

[13] *Id.* (Wichita County, TX, defenders reduced case time by 43 days in misdemeanors and 176 days in felonies).

[14] Statement from Attorney General Barr about the Establishment of the Presidential Commission, January 22, 2020, https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice

[15] *Understanding the GAO Report on Indigent Defense* (2012) (estimating that 64% of American counties lack a public defender system and stating that "[t]he most prevalent forms of indigent defense services in the United States are the non-coordinated contract and assigned counsel models.") https://sixthamendment.org/understanding-the-gao-report-on-indigent-defense/

[16] *Id.*

[17] *Id.*

Texas, for instance has 254 counties. But only 40 have a public defender office. In those counties, we have supervision, case management, support services, training, quality assurance, and accountability. We know what we get for our money, and we are good stewards of taxpayer dollars.

In the remaining 200+ counties, we spend money, but we do not always know what we get in return. Private attorneys take cases on an ad hoc basis. There is no supervision. There is no in-house training. There is little accountability. We cannot confidently say whether these attorneys complete basic tasks, like legal research, investigation, client communication, motion practice, or timely court appearance.

Our criminal justice colleagues—police, prosecutors, judges, and jailers—understand why systems are important. You have long embraced systems that include supervision, management, training, and support. These systems produce quality, accountability, transparency, and budget predictability. Research shows that public defense benefits from a comparable approach.[18]

TIDC has helped fund and plan every Texas public defender office built in the last 20 years. Today, we are helping to launch a public defender office in Travis County (Austin), one of Texas's largest counties. We are also in conversation with an additional two dozen counties interested in building public defender offices. These offices will bring much-needed oversight, training, and accountability to Texas public defense.

To be sure, building a public defender office is not a panacea. We must still ensure independence, reasonable caseloads, and resource parity. But without public defender offices, we stand little chance of bettering public defense or improving public trust in our justice system.

III. What This Commission Can Do

This Commission can recommend three things to better public defense and, in turn, improve public trust in our justice system:

A. Federal funding for state public defense

B. A federal organization focused on public defense

C. A public defense partner at every table

[18] *See Attached* Public Defender Primer.

A. Federal Funding for State Public Defense

For over half a century, the United States Supreme Court has required states to provide counsel to anyone who cannot afford an attorney.[19] But the federal government has never funded state-level public defense. This Commission should recommend partial federal funding for state-level public defense and tie that funding to accountability measures like collecting data, building public defender offices, and improving public defender offices.

B. A Federal Organization Focused on Public Defense

While public defense is a federal mandate, no federal organization ensures state-level constitutional compliance. A federal organization could do many things:

- Fund public defense
- Collect public defense data
- Be a counterpart to the Solicitor General in the United States Supreme Court
- File amicus briefs and statements of interest
- Provide public defense publications, presentations, training, and resources

Even a small federal office focused on state-level public defense could have a substantial impact.

C. A Public Defense Partner at Every Table

Due in part to the dearth of offices in much of America, public defenders have often been absent at criminal justice planning conversations. This Commission should be applauded for including public defenders in this conversation and should recommend that federal, state, and local criminal justice stakeholders do the same. Without defenders at the table, it is unlikely the public trust in our justice system will be restored.

[19] *Gideon v. Wainwright*, 372 U.S. 335 (1963).

Public Defender Primer

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Foreword

1914 saw two of the world's first public defender offices built here in Texas. A century in our rearview, and dozens of counties on, we can confidently say that public defender offices produce better results:

- Safer communities
- Fairer outcomes
- Greater cost savings

Why do Texas public defender offices work? Our criminal justice counterparts—police, prosecutors, judges, and jailers—can tell you. They've long embraced systems that include supervision, management, training, and support. These systems produce quality, accountability, transparency, and budget predictability, all to taxpayers' delight.

Public defender offices work for similar reasons: attorneys are supervised, cases managed, trainings attended, and support provided. As a result, as study after study (many discussed below) show, public defender offices produce quality, accountability, transparency, and budget predictability.

This publication considers why public defender offices get better results, profiles Texas public defender offices, and shows how to build a public defender office.

In our work, the stakes—liberty, taxpayer dollars, community safety—are high. The choice of defense system is an important one. TIDC has helped plan and fund dozens of public defender offices and stands ready to help your Texas community.

Sincerely,

Geoff Burkhart

Executive Director,
Texas Indigent Defense Commission

TIDC Members and Staff

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Honorable Sharon Keller
Austin, Presiding Judge, Court of Criminal Appeals

Ex Officio Members:

Honorable Sharon Keller
Austin, Presiding Judge, Court of Criminal Appeals

Honorable Nathan L. Hecht
Austin, Chief Justice, Supreme Court of Texas

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Honorable Missy Medary
Corpus Christi, Presiding Judge, 5th Administrative Judicial Region of Texas

Honorable Valerie Covey
Georgetown, Williamson County Commissioner Precinct 3

Staff:

Geoffrey Burkhart
Executive Director

Lindsay Bellinger
Policy Analyst

Megan Bradburry
Executive Assistant

Claire Buetow
Senior Policy Analyst

Kathleen Casey
Senior Policy Analyst

Edwin Colfax
Director of Grant Funding

Scott Ehlers
Director of Public Defense Improvement

Joel Lieurance
Senior Policy Monitor

Wesley Shackelford
Deputy Director

Debra Stewart
Fiscal Monitor

Doriana Torres
Grant Specialist

Sharon Whitfield
Budget & Accounting Analyst

The Public Defender Model

Public defender office structure ensures quality representation.

Texas Fair Defense Laws

The United States and Texas Constitutions guarantee a lawyer for anyone accused of a crime that could result in incarceration.

In 2001, Texas passed the Fair Defense Act, which provided state funding and set minimum standards for the appointment, performance, and payment of lawyers. It required counties to use a default "wheel" system for assigned counsel, which most counties use today. The Fair Defense Act also created the Texas Indigent Defense Commission (TIDC) and charged it with funding, overseeing, and improving indigent defense throughout Texas.

Indigent Defense Systems

There are four main ways to provide indigent defense. Texas Counties may have more than one system or may share systems across a region.

Public Defender: Full-time, salaried attorneys are appointed, supervised, and paid by an office.

Managed Assigned Counsel: Private attorneys are appointed, supported, and paid by a defense management organization on a rotating, case-by-case basis.

Contract: Private attorneys contract with a county for a volume of cases.

Assigned Counsel: Private attorneys are appointed and paid by the court on a rotating, case-by-case basis.

Texas Public Defenders

In 2019, 36 of 254 counties had public defender offices. Those counties vary considerably by size and needs, but most report that public defender offices ensure better performance, accountability, budget predictability, and compliance with criminal laws and standards.

The Advantage of Public Defenders

Many Texas indigent defense systems pay private attorneys on a case-by-case basis and offer little or no supervision. Defender offices create structures that help attorneys meet ethical requirements and best practices:

- **Independence.** Defenders make decisions about representation independent of courts.
- **Oversight.** Staff are supervisedfor quality representation.
- **Workload.** Attorneys are not paid by the case, and so are not incentivized to take more than they can handle.
- **Teams.** Attorneys and support staff work together on cases.
- **Training.** Staff are trained and mentored in-house.
- **Institutionalization.** Defender offices are a single hub for defense, like a prosecutor's office.
- **Administration.** Defender offices manage case assignment and are consistently available to courts.

Research shows that, because of this structure, public defenders get better outcomes and reduce justice system costs.

Research on Public Defenders

Recent studies have found that public defender improve outcomes.

Outcome Studies

Dozens of studies have compared types of defense counsel (Feeney and Jackson; Hartley et al.). Recent, sophisticated statistical analysis (Bellin) has shownthat public defenders get better outcomes than private assigned counsel:

- Reduced case time
  - ↓ Fewer continuances in Kentucky, Rhode Island, and Minnesota counties (Ostrom and Bowman)
- Reduced likelihood of conviction
  - ↓ 3% across state cases (Roach)
- Reduced likelihood of prison
  - ↓ 22% in San Francisco (Shem-Tov)
- Reduced sentence lengths
  - ↓ 16% in federal cases (Iyengar)
  - ↓ 26% across state cases (Cohen)
- Reduced system costs
  - ↓ $200 million in potential prison savings in Philadelphia (Anderson and Heaton)

What accounts for these differences? Research points to structure and pay. Assigned counsel are:

- Less prepared, less communicative, and more isolated when paid low, flat fees (Anderson and Heaton)
- Less experienced and worse performing when paid below market rates (Roach)
- Less likely to go to trial when paid more for pleas (Agan et al.)

Program Evaluations

Public defender offices in Texas counties have been found to improve outcomes for indigent defense systems:

- Reduced jail time and costs
  - ↓ 113 fewer jail days per felony case in Kaufman
  - ↓ $2,207 jail savings per case in misdemeanors in Fort Bend
- Reduced case time and costs
  - ↓ 43 days in misdemeanors and 176 days in felonies in Bowie
- Reduced likelihood of conviction
  - ↓ 23% in misdemeanors and felonies in Wichita
- Reduced recidivism
  - ↓ 22% fewer rearrests in mental health cases in Travis

Generally, evaluations have attributed better outcomes to:

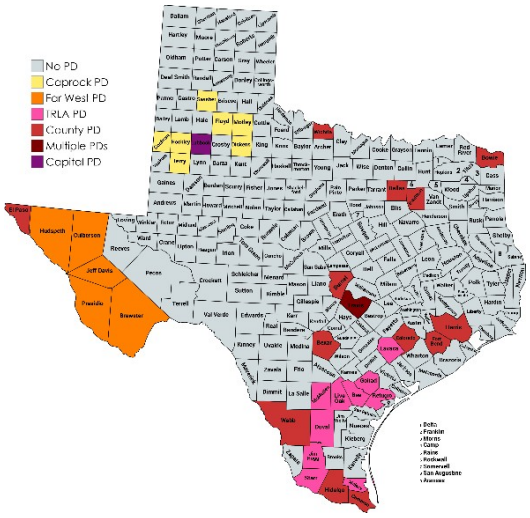
- Lower caseloads
- More investigators
- More client contact
- More training
- Faster case assignment

They have also noted more qualitative improvements:

- Better justice system coordination
- Better supervision of attorneys
- More training for the private bar
- More client satisfaction

Texas Public Defenders

Snapshots of public defender offices in 2020.



Single-County Programs

Bexar County

Bowie County

Burnet County

Cameron County

Colorado County

Dallas County

El Paso County

Fort Bend County

Harris County

Hidalgo County

Kaufman County

Travis County (2 offices)

Webb County

Wichita County

Regional Programs

Caprock Program at Texas Tech
Lubbock-area rural counties

Far West Texas
Culberson, Hudspeth, Jeff Davis, Presidio, and Brewster Counties

Texas Rio Grande Legal Aid (4 offices)
Bee, Goliad, Live Oak, McMullen, and Refugio Counties

Lavaca County

Starr, Duval, and Jim Hogg Counties

Willacy County

Statewide Programs

Regional Public Defender Office for Capital Cases

Office of Capital and Forensic Writs

State Counsel for Offenders

Bexar County

Established: 2005

Case Types: Felony, misdemeanor, appellate, mental health, magistration

Staff: 25 total; 20 attorneys (1 chief, 3 for misdemeanors, 4 for mental health, 2 for civil commitments, 2 for appeals, 8 for magistration), 1 caseworker, 2 paralegals, 1 administrative assistant and 1 office manager

Total TIDC Grants: $1,687,160 since 2005

Outcomes:

- Public defenders secured more mental health personal bonds, avoiding 3,615 jail days per year.

Spotlight on Bexar County:

"The first line of defense."

The public defender office in Bexar County, home to San Antonio, specializes in some of its toughest cases. To get results, it has to act quickly.

By 2005, Bexar County had met many of the requirements of the Fair Defense Act: local attorneys had to meet new qualifications to be paid under a new fee schedule. For appeals, however, too few attorneys qualified to take cases, so those who did qualify had high caseloads. Attorneys struggled to make deadlines, cases lagged, and defendants waited in jail. Some defendants missed their chance to appeal.

To better manage attorneys' workload and appointment process, TIDC awarded $1,174,009 in grants to Bexar County to start a public defender office. If a defendant was wrongfully convicted and sitting in jail, he or she had a number to call to make things right. Judges, too, could rely on one office to answer the phone.

In 2015, the County again turned to the public defender for help with its jails. It had built a new central magistration facility, where specialists on-site could identify people with mental illness and divert them to treatment shortly after arrest. The problem was that only about 2% who might have been eligible were diverted. Most did not want to discuss their mental illness with jail staff.

With help from $513,151 in grants from TIDC, the public defender office started meeting with people within hours of their arrest and representing those with serious mental illness. At magistration, they advocated for release on mental health bonds.

Bexar County Public Defender's Office

They found that people who were represented by the public defender were 20% more likely to be released than those who had been recommended for a bond by pretrial services. Within a few years, the office more than doubled the number of people who were diverted from jail to treatment.

Recognizing this success, Bexar County judges and commissioners expanded counsel at magistration, so that the public defender now represents everyone who is arrested.

Only a few counties in Texas—including Cameron, Fort
Harris—currently provide counsel at magistration. Defendants in most counties stand alone the first time they see a judge.

Bexar County Chief Public Defender Michael Young says that early representation can change your whole experience of the criminal justice system: "You're scared, you're trying to contact friends and family, you don't know what's going on—sometimes for days and months. With an attorney, you have a voice from the beginning. I think that has a profound effect on how you navigate your whole case."

First Assistant Public Defender Stephanie Brown agrees: "Being the first line of defense, if I'm representing you just for magistration today, I'll point you in the right direction for the rest of the case, so you won't be lost." She says that even people who have been through the system many times have a better understanding of their cases after being represented by the public defender.

The public defender continues to represent some clients with mental illness after magistration, both in specialty courts and traditional courts.

They have seen that early representation leads to better results throughout a case. Clients have a reliable advocate they can call, are connected to help for issues like substance abuse and homelessness, and have better outcomes.: higher rates of compliance with court orders and treatment plans, and higher dismissal rates when they get to trial.

To Michael, this is just good lawyering. "When I was in private practice, the first thing I'd do is get my client in drug treatment or behavioral therapy. Before you ever get to court, you take remedial action."

At the same time, Stephanie says that being a public defender "takes a special kind of person. We're here because we love what we do." She joined the office in 2015 to lead the magistration unit. She had been a prosecutor for the first seven years of her career, then tried family and insurance law. Public defense has been different. "I can ensure justice just as well from this side as from the prosecutor's," she says. "And I have more leeway to help people."

Next for the office is a starting a domestic violence unit that will specialize in finding alternatives to jail, so that clients can get treatment and continue supporting their families.

Those clients are often denied mental health bonds because of fear of recidivism. By taking the tough cases head-on, as soon as they reach the criminal justice system, the public defender office hopes it can help break the cycle.

Example TIDC Grants

Total grants disbursed are listed for each office. These are examples of how they were allocated:

Rural Regional
(under 100,000 population):
Far West Texas, $529,890 to date

- Ongoing sustainability:
  - FY2018-19 grants
  - Annual average: $264,945

Small County
(under 100,000 population):
Burnet County, $935,570 to date

- Office start-up: $935,570
  - FY2012-15 grants
  - Annual average: $234,143

Medium County
(100-250,000 population):
Wichita County, $634,627 to date

- Videoconferencing: $19,505
  - FY2010 grant
- Mental health social worker:
  - FY2013-17 grants
  - Annual average: $24,654
- Appellate and bond attorney: $66,528
  - FY2019 grant (in progress)

Large County
(over 250,000 population):
Bexar County, $1,687,160 to date

- Office start-up: $903,748
  - FY2005-09 grants
  - Annual average: $207,317
- Appellate attorneys and office equipment: $270,260
  - FY2007 grant
- Magistration attorneys and office equipment: $513,151
  - FY2016-19 grants
  - Annual average: $128,288

Bowie County

Established: 2007

Case Types: Felony, misdemeanor

Staff: 8 total; 5 attorneys (4 for felonies, 1 for misdemeanors), 1 investigator, and 2 administrative assistants

Total TIDC Grants: $1,407,039 since 2008

Outcomes:

- Public defenders disposed misdemeanors 43 days sooner and felonies 176 days sooner (almost six months) than private or retained counsel or unrepresented defendants.

Burnet County

Established: 2011

Case Types: Felony, misdemeanor, juvenile

Staff: 5 total; 3 attorneys (1 for felonies and juvenile, 1 for misdemeanors and juvenile, and 1 mixed), 1 investigator and 1 legal assistant

Total TIDC Grants: $936,570 since 2012

Outcomes:

- Public defenders were assigned to and met with clients sooner than appointed or contract counsel, and lowered costs of representation.

Cameron County

Established: 1999

Case Types: Juvenile

Staff: 2 attorneys

Total TIDC Grants: $0

Caprock

Regional

Established: 2009

Counties: Varies by year. Seven Panhandle and South Plains counties in FY2019: Cochran, Dickens, Floyd, Hockley, Motley, Swisher, and Terry

Case Types: Felony, misdemeanor

Staff: 1 attorney director and 7 student attorneys at Texas Tech University

Total TIDC Grants: $498,461 since 2017

Outcomes:

- By charging less than regular flat fees, Caprock estimates it saved counties around $28,000 in 2019.

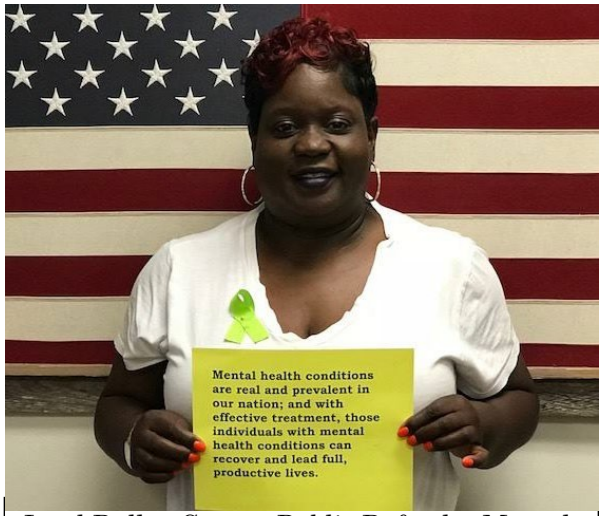
Colorado County

Established: 1987

Case Types: Felony, misdemeanor, juvenile

Staff: 2 part-time attorneys and 1 administrative assistant

Total TIDC Grants: $0



Lead Dallas County Public Defender Mental Health Case Manager Angela Heggins

Dallas County

Established: 1983

Case Types: Capital, felony, misdemeanor, juvenile, appellate, mental health, child protective services (CPS), post-conviction

Staff: 123 total; 88 attorneys (81 for criminal cases, 3 for civil commitment, 4 for CPS, 1 for *Padilla* consultations), 15 investigators, 5 caseworkers, 1 interpreter, 6 legal assistants, and 7 administrative assistants

Total TIDC Grants: $799,883 since 2004

Outcomes:

- People with mental illness had significantly more treatment contact and lower rates of recidivism when represented.

El Paso County

Established: 1987

Case Types: Capital, felony, misdemeanor, juvenile, appellate, mental health

Staff: 85 total; 50 attorneys, 8 investigators, 6 caseworkers, 17 legal assistants, and 4 administrative assistants

Total TIDC Grants: $3,408,631 since 2004

Outcomes:

- The public defender is currently being evaluated by the Meadows Mental Health Policy Institute through a grant from TIDC.

Far West Texas

Regional

Established: 2018

Counties: Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio

Case Types: Felony, misdemeanor

Staff: 6 total; 3 attorneys, 1 investigator, 1 social worker, and 1 office administrator

Total TIDC Grants: $529,890 since 2018.

Outcomes:

- The office serves two counties that previously had no local lawyers.

Spotlight on Far West Texas:

"These folks are our neighbors."

The 394th Judicial District, east of El Paso, covers 20,000 square miles. Its five counties occupy 8% of the Texas' land area, yet are home to only 25,000 people.

In 2017, there were only a few attorneys in the area, and almost none were qualified to handle criminal cases or willing to take what the counties could pay. At the same time, a Border Patrol checkpoint meant these sparsely populated counties had high case volumes.

TIDC worked with District Judge Roy Ferguson to craft a solution: The Far West Texas Regional Public Defender Office. With the help of TIDC grants covering two-thirds of expenses, or about $265,000 a year, it has become as a model for providing effective representation in rural counties.

"Culberson County is thrilled to sponsor the grant," said Culberson County Judge Carlos Urias. As the grant sponsor, Culberson receives reimbursement from TIDC and coordinates with the other counties through interlocal agreements. "This program will provide a huge leap forward in the administration of justice across the entire region."

Chief Defender James McDermott says distance is his biggest challenge; it takes over six hours to drive across his service area. Each of the office's three attorneys works across all five counties, handling most misdemeanors and felonies. An investigator provides a full range of services, from intake to mitigation to innocence investigation. A social worker

Far West Texas Public Defender's Office

assists with clients with mental illness. And an office administrator coordinates everyone's coverage of the courts. "It's a small but dedicated and intense staff," says James.

Their team approach has won the trust of clients. One had had 5 previous DWI convictions. Roland Valles, the Far West Texas investigator, was the first to ask about his history and develop a case for mitigation. After a hard-fought jury trial, he was convicted and sentenced to rehab. James recalls, "He kept thanking us, and I asked him why. We had lost! He responded that no one had ever listened to him and now he could see a future for himself."

Though there are significant challenges, "practicing in small communities can be a real joy," James says. "We know all the courthouse and jail staff. These folks are often our neighbors and friends." When their family members have been arrested, they have asked the public defender for help.

James would like to see other counties start rural programs like his. "The people of your counties deserve a well-run public defender. Your juries and your court staff will appreciate the professionalism and the work product. But more importantly, the community will build a greater trust and respect for the courts and the justice system when they see what it means when rights are protected, and justice is done."

"It's not that we win every case, but that no matter the outcome, the community can see what it means to fight for someone and hold the system accountable. And they will then want more to participate in this great democracy. Who can lose if that is the result?"

Fort Bend County

Established: 2010

Case Types: Felony, misdemeanor, mental health, magistration

Staff: 20 total; 10 attorneys, 2 investigators, 5 caseworkers, 3 administrative assistants

Total TIDC Grants: $2,791,156 since 2010

Outcomes:

- 85% of clients were satisfied with their representation.
- Misdemeanor clients with mental illness spent, on average, 37 fewer days in jail.

Harris County

Established: 2011

Case Types: Felony, misdemeanor, appellate, mental health, magistration, post-conviction,

Staff: 129 total; 87 attorneys (83 for criminal cases, 1 for youth services, 2 for *Padilla* consultation, and 1 policy director), 11 investigators, 10 caseworkers, 4 community advocates, 14 administrative assistants, 2 human resources positions, and 1 information technology coordinator

Total TIDC Grants: $13,567,330 since 2011

Outcomes:

- Misdemeanor clients with mental illness were five times as likely to have their cases dismissed.

Hidalgo County Public Defender's Office

Hidalgo County

Established: 2005

Case Types: Felony, misdemeanor, juvenile

Staff: 17 total; 11 attorneys, 1 investigator, 1 legal assistant, and 4 administrative assistant

Total TIDC Grants: $1,413,217 since 2005

Outcomes:

- The county achieved compliance with state rules by appointing the public defender in juvenile cases.

Kaufman County

Established: 2007

Case Types: Felony, misdemeanor, mental health

Staff: 8 total; 4 attorneys, 1 investigator, 1 caseworker, and 2 legal assistants

Total TIDC Grants: $632,627 since 2007

Outcomes:

- The office helped reduce the daily jail population by 200 inmates, saving $2.8 million per year.

Texas Rio Grande Legal Aid

Regional

Established: 2009

Counties: Coastal Plains (Bee, Goliad, Lavaca, Live Oak, McMullen, and Refugio) and Rio Grande Valley (Starr, Duval, Jim Hogg, and Willacy)

Case Types: Felony, misdemeanor, juvenile, appellate

Staff: 27 total: 1 director, 1 deputy director, and, in each office, 1 chief, 1-7 attorneys, 1-3 investigators, and 1 administrative assistant

Total TIDC Grants: $5,906,910 since 2009

Outcomes:

- TRLA is currently being evaluated by Texas A&M University through a grant from TIDC.

Spotlight on TRLA:

"You're part of a law firm."

For clients of the Starr County Public Defender's Office, their defense begins before they even have an attorney.

That is because an investigator from the office screens people who request an attorney, and may be the first person they speak to in jail. They might show signs of serious mental illness, or share that their children are in trouble. If they qualify for the public defender, an attorney follows up right away.

This is characteristic of the Texas Rio Grande Legal Aid (TRLA) Public Defender program's team approach. TRLA is a primarily a civil legal services provider that has four public defender offices in southeastern Texas.

Each office serves rural counties, taking most of their appointed cases. The Starr County office, for example, also serves Duval and Jim Hogg Counties, each of which have populations of less than 15,000 people. Because TRLA is a rural, regional program, TIDC reimburses two-thirds of its counties' expenses, or about $1,234,955 per year.

Within each office, there are attorneys, investigators, and assistants. Some have social workers or peer specialists. That means that clients always have someone they can talk to, which is especially important for those who have difficulty communicating due to a mental illness or developmental disability.

It also means that clients have a full legal team working on their case. Linda Gonzalez, Chief Defender for Starr County, says, "We often meet as a team to come up with appropriate trial strategies, moot hearings, and review each other's motions. At TRLA, you always feel like you're part of a law firm, a bigger team. In our group, it happens organically."

She contrasts that feeling with her time as a private criminal defense attorney. As a solo practitioner, she says, "even if you have desire to help clients, you don't have the resources of a law firm. Two brains are better than one. And being part of an organization gives you the courage to ask for what your client needs."

Linda can reach out to other TRLA chiefs in Bee, Lavaca, and Willacy Counties, or the Director of the TRLA Public Defender program, Abner Burnett. "Abner is always available," Linda says. "He knows more of our clients by name than any director out there. He knows our legal issues."

"Having someone with so much experience like Abner, and things like motions templates, means you're not reinventing the wheel. Those are stark differences from solo practice and all of them have helped me become a better lawyer," she says.

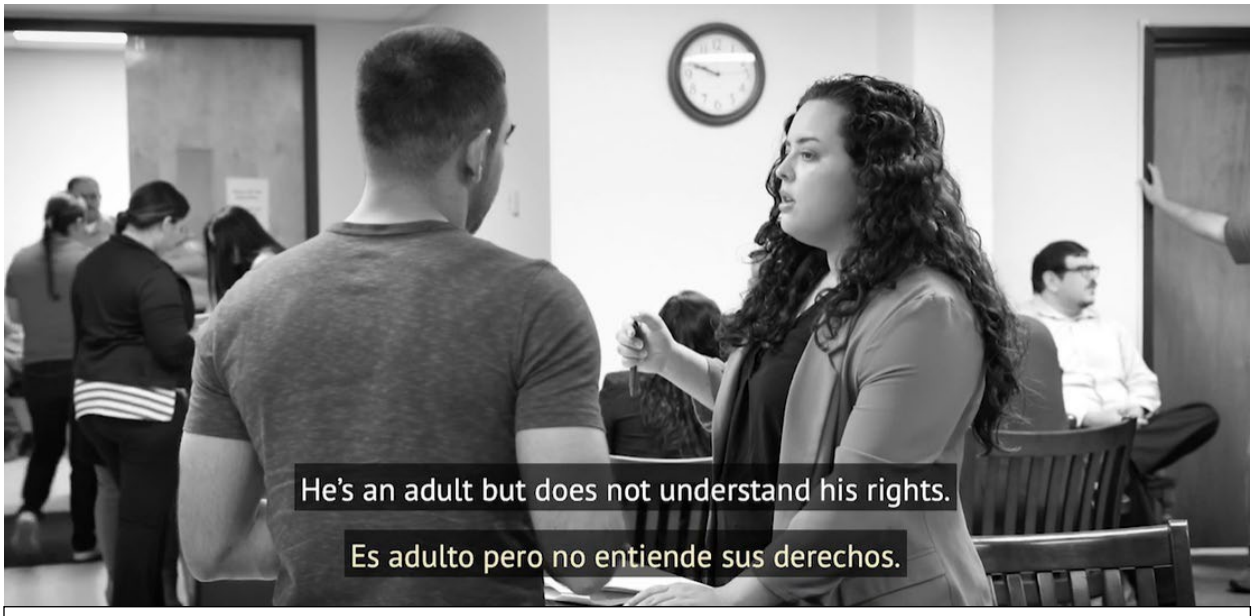
Another benefit of belonging to a larger organization is that TRLA's public defense clients may qualify for its civil legal services. The same, low-income people often have many legal issues arising from the same events. TRLA public defenders can refer clients to their housing, public benefits, immigration, or school suspension legal divisions. Resolving those collateral issues can change the outcome of their criminal cases.

Identifying all the issues is part of developing a defense strategy. An advantage of rural practice, Linda says, is that "we get to know our clients, where they come from, and their circumstances. It allows us to be very thorough in our preparation of a defense."

Being prepared is important to judges, says Abner. "When we first open, judges and prosecutors fear that we'll clog dockets. But, over time, they see we're prepared at trial. We're always in the courtroom. At every office, the staff is enthusiastic about helping the courts, clerks, and jails and making their work easier. Most private attorneys don't have the time."

Linda adds, "Commissioners and county judges are often wary that public defenders will cost more. It quickly becomes clear that public defenders empty out the jail [so] there are beds available for federal inmates and inmates from other counties."

Abner observes that some of the greatest successes of public defenders are the stories that are never told. "The stories you hear about the criminal justice system are of people who were poorly represented, wrongfully convicted, then exonerated. Linda and people in our other offices establish innocence at trial. They handle it before it hits the news."



TRLA Starr County Public Defender Jessica Anderson.

Travis County

Juvenile Public Defender

Established: 1971

Case Types: Juvenile

Staff: Not reported

Total TIDC Grants: $0

Mental Health Public Defender

Established: 2007

Case Types: Felony, misdemeanor, mental health

Staff: 13 total; 4 attorneys, 6 caseworkers, 1 legal assistant, and 2 administrative assistants

Total TIDC Grants: $1,378,365

Outcomes:

- The public defender had 47% of its cases dismissed, compared to 19% for assigned counsel.

Webb County

Established: 1988

Case Types: Felony, misdemeanor juvenile

Staff: Not reported

Total TIDC Grants: $931,137

Wichita County

Established: 1989

Case Types: Felony, misdemeanor, appellate, mental health

Staff: 14 total; 7 attorneys, 2 investigators, 1 caseworker, 1 legal assistant, and 2 administrative assistants

Total TIDC Grants: $209,304

Outcomes:

- By reducing charges and getting dismissals, the office has made a net benefit of $210 per case.

How to Build a Public Defender Office

TIDC provides support at each stage of building an office.

Grant Checklist

Planning

- ✓ **Contact TIDC.** Learn about funding and planning options.
- ✓ **Request a planning study.** TIDC provides free cost estimates based on key decision points.
- ✓ **Talk to local stakeholders.** Identify who should be consulted and plan an office with them.

Funding

- ✓ **Learn about TIDC's grant process.** Webinars are typically offered in February.
- ✓ **Apply for a grant.** Priority deadline is in May.
- ✓ **Work with TIDC to modify a proposal.** Staff present proposals for board review at quarterly meetings.
- ✓ **Accept a grant award.** Priority awards begin in October.

Launching

- ✓ **Report progress to TIDC.** TIDC assists with first steps.

Improving

- ✓ **Apply for an expansion grant.** Ask TIDC about improving an office.

Overview

The best way to build an office is through a careful process of planning, funding, launching, and improving a program to achieve desired outcomes. TIDC has worked with dozens of counties, large and small, to create and expand offices, and can help at every stage.

Planning

Not sure where to start? **Contact TIDC's Improvement Team** to begin the conversation. TIDC may ask about:

- Challenges with the current system
- Case volume and spending
- Interest from local and regional officials and stakeholders

The first stage in building an office is assessing local needs. TIDC provides data about indigent defense cases and spending at http://tidc.tamu.edu/public.net/. Local court and auditor data can provide additional information, especially about attorney performance. The Improvement Team can help interpret this data and compare it to that of similar jurisdictions.

Contact TIDC

info@tidc.texas.gov
512-935-6994

Where it would be helpful, TIDC will prepare a **public defender planning study** free of charge. A planning study models options for an office based on key decision points. For each decision point, there are a range of model practices around the state and country. In a planning study, or more informally, TIDC can advise on how decision points affect costs, quality, and operations:

- **County or Regional**

An office can provide representation in one or more counties (Art. 26.044(b)). Counties with small caseloads may find joining a regional program more cost-effective. Counties are eligible to apply for TIDC grants that fund half of single-county offices' start-up expenses for four years. Rural regional public defender offices serving multiple counties under 1000,000 population may be eligible for sustainability grants covering two-thirds of ongoing expenses.

- **Governance and Leadership**

An office must have a qualified chief defender (Art. 26.044(f)). It may also have an oversight board that includes members of the bar, local officials, community representatives, and clients (Art. 26.045). While the chief leads day-to-day operations, the board recommends selection and removal of the chief, and can help set policy and provide budget guidance (Art. 26.045). If the office is grant-funded, TIDC requires a board to ensure independence and quality of counsel.

- **Government or Nonprofit**

An office can be a governmental entity or a nonprofit contracting with the government (Art. 26.044(a)(1), (4)). To contract with a nonprofit, the commissioners court must

Legal Requirements

Articles 26.044-5 of the Texas Code of Criminal Procedure (CCP) set requirements for public defender offices. In brief, an office must:

- ✓ Have duties, cases, and courts in which it may appear, specified by commissioners court.
- ✓ Have a written proposal or plan operation, including:
  - ✓ Budget and overhead
  - ✓ Position descriptions
  - ✓ Maximum caseloads
  - ✓ Training plan
  - ✓ Policy for using experts and investigators
  - ✓ Policy for avoiding conflicts of interest

  A nonprofit's proposal must demonstrate quality controls, and not solely low cost.
- ✓ Be directed by an experienced chief public defender.
- × Not allow attorneys to engage in private practice of law.
- × Not accept outside payment for representation.
- × Not accept an appointment if doing so would be unethical.
- × Not give its oversight board privileged information.

In addition, Article 26.04(f) requires that an office must:

- ✓ Have priority in receiving appointments.

solicit proposals that include certain elements specified in statute and that reasonably demonstrate the ability to provide quality representation, not just low cost (Art. 26.044(c)-(e)). A government agency may have a stronger institutional presence (balancing the prosecutor), while a nonprofit may have more independence (allowing for innovation).

- **Caseloads**

An office must have maximum caseload limits for attorneys (Art. 26.044(c-1)) and refuse cases that would violate these limits (Art. 26.044(j)(4)). TIDC recommends setting caseload limits that are consistent with its published guidelines, which recommend no more than 239 misdemeanors cases, 138 felonies, or 31 appeals per year, per public defender. TIDC's guidelines are based on a study it commissioned from the Public Policy Research Institute at Texas A&M University that found that attorneys may not meet ethical duties to clients if they exceed these limits. TIDC's funding models in planning studies are based on these guidelines.

- **Case Composition**

The commissioners court must specify what types of cases an office may take (Art. 26.044(b)(2)). An office can handle nearly all cases in a county, specialize in certain case types (for example, felonies or mental health cases), or handle some percentage of the overall caseload. Assigned counsel will almost always be needed to handle at least some cases, especially those that would create conflicts of interest for the public defender (Art. 26.044(c-1)(7), (j)(1)).

- **Staff and Salaries**

A public defender's proposal or plan of operations must include job descriptions and salaries (Art. 26.044(c-1)(1), (2)). TIDC will work with counties to estimate defender salaries based on pay at county and district attorneys' offices.

Resource parity should extend to support staff (like legal assistants) and other specialists who are essential to the public defender team model. A public defender proposal or plan must have policies for using licensed investigators and expert witnesses (Art. 26.044(c-1)(7)) and ideally should include other specialists like mental health caseworkers and *Padilla* immigration attorneys. TIDC planning studies recommend staffing levels and salaries.

- **Operations**

A public defender's proposal or plan of operations must describe anticipated overheard (Art. 26.044(c-1)(5)). An advantage of the public defender model over private assigned counsel is that attorneys pool overhead costs. TIDC's planning studies estimate what items like office space, technology, and supplies will cost. A planning study for a rural regional program may also estimate travel costs.

• • •

TIDC recommends forming a workgroup of **local and regional stakeholders** to discuss these decision points and plan the office. To build a functional office and to receive a grant, it is important to have the support of judges, commissioners, and the defense bar (see page 22 for a list of officials who must approve the grant). It is also valuable to consult with the County and District Attorneys; the public; and public defenders and county officials from other counties.

Funding

TIDC's Improvement and Grants Teams can help turn a public defender office plan into a grant proposal for state funding.

TIDC awards competitive, multi-year Improvement Grants to help fund public defender offices. TIDC typically funds half of start-up costs over four years. Rural regional offices—those serving multiple counties under 100,000 population—may be eligible for 80% of first-year start-up costs and two-thirds of ongoing costs.

Year	Standard	Rural Regional Sustainability
1	80% grant	80% grant
2	60% grant	66% grant
3	40% grant	66% grant
4	20% grant	66% grant
5+	0% grant	66% grant

Funds are awarded annually and disbursed quarterly, as reimbursement for eligible expenses. The award timeline is:

- **January**: Request for Applications (RFA) published online.
- **March**: Deadline for optional Intent to Submit Application (ISA), submitted online.
- **May**: Priority deadline for required full grant application, submitted online. TIDC's Grant Review committee meets.
- **June**: Grants considered at the Board Meeting.
- **October**: Grant programs begin.

All Improvement Grants are competitive, and subject to TIDC Board approval and availability of funding. Grants may be submitted and considered after May. but applications submitted in May receive **priority consideration**.

To receive a TIDC grant, a county must have submitted these required reports:

- ✓ Indigent Defense Expenditure Reports (IDER), annually to TIDC
- ✓ Indigent Defense Plans, biennially to TIDC
- ✓ Responses to monitoring reports, as requested by TIDC
- ✓ Court reports, monthly to OCA

A multi-year Improvement Grant must:

- ✓ Request at least $50,000 in state funding over four years.
- ✓ Provide for a county match of about 50% over four years.
- ✓ Fund a new program or position.
- ✓ Fund direct client services.

A new public defender office will almost always meet these requirements. A public defender grant must also:

- ✓ Focus on serving people
- ✓ Demonstrate broad judicial support
- ✓ Involve the defense bar in planning
- ✓ Have quality controls for the office:
  - ✓ Appointment process
  - ✓ Support services for attorneys
  - ✓ Caseload standards
  - ✓ System for managing caseloads
  - ✓ System for performance and cost reporting
  - ✓ Emphasis on training, supervision, and evaluation

Finally, TIDC prefers programs that:

- ✓ Model practices for other counties.
- ✓ Involve multi-county coordination.
- ✓ Make long-term commitments.
- ✓ Match funds with other sources.
- ✓ Have minimal indirect costs.
- ✓ Serve small counties

In addition, to apply for and receive a grant, it is necessary to have sign-off from:

- **The Program Director**, who is designated to oversee day-to-day grant operations.
- **The County Judge**, or other designated authorized official for accepting and modifying the grant
- **The County Auditor or Treasurer**, the financial official for receiving grant payments
- **Commissioners Court**, which adopts a resolution to authorize the grant application to approve the grant application and award
- **Local Administrative County and District Judges and Chair of the Juvenile Board**, who approve Indigent Defense Plans and sign a Cooperation Agreement
- **County and District Court Judges**, who hear criminal matters and sign a Cooperation Agreement
- **The Defense Bar**, who may submit a letter of support

TIDC staff can assist with planning the program and budget, writing the grant, providing information to local officials, and presenting the application to its Board.

Launching

During the grant, the county will submit quarterly progress reports and annual renewal applications. TIDC can advise on first steps and initial grant conditions, like submitting proposed plans to TIDC.

Improving

Established public defender offices can apply for grants and technical assistance to evaluate their programs and expand innovative practices.

Grant FAQ

Does TIDC guarantee four or more years of grant funding?

No, but it is likely. TIDC awards grants by fiscal year. A county must submit a short renewal application each year. TIDC may award funds subject to its budget and the program's success.

Can a county apply for another grant to expand an office after the first four years?

Yes. The grant must be for a new program.

Can a county apply after May?

Yes. TIDC accepts applications after the priority deadline, but funds may be limited.

Can a county submit more than one grant application?

Yes. Each year, a county can submit one multi-year application and one single-year application (for smaller-scale projects).

Does every judge need to sign off on the public defender office to receive a grant?

No. But TIDC is unlikely to fund an office where local opposition would prevent the office from receiving appointments or functioning as intended.

Can an improvement grant affect my formula grant?

Yes. TIDC can model all projected grants, which should overall increase.

Statistical Tables

Table X. Texas Public Defender Cases (FY2019)
Source: County auditor reports at http://tidc.tamu.edu/public.net/

	County Served	Juvenile	Capital	Felony	Misdemeanor	Appeals	Total Public Defender Cases	Total Indigent Defense Cases	% Public Defender Cases
Single-County Offices	**Bexar**			234	1,428	57	1,719	42,376	4%
	Bowie	41		1,270	1,743		3,054	3,226	95%
	Burnet	56		406	409		871	1,028	85%
	Cameron	587					587	5,811	10%
	Colorado	13		121	126		260	279	93%
	Dallas	7,137	31	10,366	15,366	87	32,987	54,467	61%
	El Paso	2,260	3	3,815	3,757	27	9,862	18,351	54%
	Fort Bend			444	582		1,026	5,892	17%
	Harris	683		2,162	2,124	114	5,083	111,173	5%
	Hidalgo	165		225	2,594		2,984	15,557	19%
	Kaufman			414	338		752	2,154	35%
	Travis	2,560		39	353		2,952	29,474	10%
	Webb	451		1,245	1,116		2,812	4,059	69%
	Wichita			902	976	9	1,887	3,773	50%
Texas Rio Grande Legal Aid	**Bee**	7		224	247	1	479	527	91%
	Duval			44	98		142	184	77%
	Goliad	1		32	41		74	93	80%
	Jim Hogg	1		13	36		50	88	57%
	Lavaca			48	107		155	280	55%
	Live Oak	1		137	147		285	302	94%
	McMullen		2	32	17		51	54	94%
	Refugio			129	87		216	262	82%
	Starr	8		163	278		449	465	97%
	Willacy	22		167	327		516	598	86%
Far West Texas	**Brewster**			56	27		83	101	82%
	Culberson			28	2		30	38	79%
	Hudspeth			113	27		140	158	89%
	Jeff Davis			10	3		13	17	76%
	Presidio			26	5		31	42	74%
Caprock	**Cochran**			14			14	78	18%
	Dickens	1			15		16	34	47%
	Floyd				6		6	44	14%
	Hockley			56	50		106	550	19%
	Motley				5		5	10	50%
	Swisher	2			7		9	82	11%
	Terry			2	37		39	393	10%
	Other						0	221,799	0%
	Total	**13,996**	**53**	**22,937**	**32,481**	**295**	**69,745**	**523,819**	**13%**

Table X. Texas Public Defender Staffing (FY2019)

Source: Defender office reports

	County HQ	Chief	Managing Attorneys	Line Attorneys	Investigators	Case Workers	Legal Assistants	Administrative Assistants	Other	Total
Single-County Offices	**Bexar**	1		20		1	2	2	2	28
	Bowie	1		4	1			2		8
	Burnet	1		2	1		1			5
	Cameron			2						2
	Colorado			1				1		2
	Dallas	1	13	67	15	5	6	7	9	123
	El Paso	1	4	45	8	6	17	4		85
	Fort Bend	1	1	9	2	5		3		21
	Harris	1	9	74	11	10		14	10	129
	Hidalgo	1	2	8	1		1	4		17
	Kaufman	1		3	1	1	2			8
	Travis (Juv.)									[*]
	Travis (MH)	1		3		6	1	2		13
	Webb									[*]
	Wichita	1	1	5	2	1	2	2		14
TRLA	**Bee**	1	2	5	3			1		12
	Lavaca	1		1	1					3
	Starr	1	1	3	2			1		8
	Willacy	1		1	1			1		4
Far West	**Culberson**	1		2	1	1		1		6
Cap-rock	**Lubbock**	1		3						4
	Total	**17**	**33**	**257**	**50**	**35**	**32**	**45**	**21**	**492**

Notes:

- Asterisk (*) denotes missing data.
- **All counts and categorizations are approximations by TIDC**, based on informal reports from defender offices**.**
- "Other" includes operational support, civil attorneys, and non-lawyer specialists (like interpreters).
- Counts are for full-time equivalent (FTE) staff, contractors, or students. Part-time staff are counted toward 1 FTE.
- Counties are where offices are based, not necessarily which counties are served.

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TEXAS INDIGENT DEFENSE COMMISSION

PLANNING STUDY
TRAVIS COUNTY PUBLIC DEFENDER OFFICE

TABLE OF CONTENTS

SUMMARY

Travis County has asked the Texas Indigent Defense Commission (TIDC) to determine the feasibility of a Travis County Public Defender Office. TIDC has determined that a Public Defender Office is both feasible and desirable. The Office would improve quality, accountability, data, and efficiency. This report discusses Travis County's public defense background, explores decision points the County should consider in creating a Public Defender Office, and outlines a model for discussion purposes. The model shows the following:

- Cases: The Public Defender Office would handle 30% of misdemeanor and noncapital felony cases.
- Staffing: The Public Defender Office would be staffed by 66 employees, including 48 attorneys, 6 investigators, 8 support staff, and 4 social workers.
- Existing Offices: The Public Defender Office would incorporate the Mental Health Public Defender, Juvenile Public Defender, and Office of Parental Representation as divisions of the Office.
- Costs and Savings: The Public Defender Office would cost the County about $106,000 more per year on average in the first four years, assuming TIDC board approval of discretionary grant funding. After TIDC funding ceases, the county would pay about $3.5 million more per year.

Projected Travis County Indigent Defense Costs

	Year 1 (15% of cases)	Year 2 (30% of cases)	Year 3	Year 4	Yearly Avg. Over 4 Yrs.
Current System	$13,897,070	$13,897,070	$13,897,070	$13,897,070	$13,897,070
Public Defender System (offset by TIDC grants)	$12,483,373	$13,093,370	$14,510,185	$15,926,574	$14,003,375
Cost Difference	-$1,413,697	-$803,701	$613,115	$2,029,504	$106,305

The model proposed on pages 18-23 is intended not as a prescription, but as a springboard for discussion. TIDC and its staff look forward to continuing this conversation with Travis County.

I. INTRODUCTION

Travis County has asked the Texas Indigent Defense Commission (TIDC) to study the creation of a Travis County Public Defender Office.[1] This report discusses Travis County's public defense background, explores decision points the County should consider in creating a public defender office, and outlines a model for discussion purposes. TIDC has concluded that a public defender office is both feasible and desirable. TIDC stands ready to assist Travis County with technical and possibly financial assistance.

II. BACKGROUND

Travis County has approximately 1.3 million residents. The population is concentrated in and around Austin, Texas. The County has 8 criminal district courts, including a magistrate court with a felony-level specialty docket. The County also has 1 juvenile district court. The County also has 7 criminal county courts-at-law.

The County has 2 limited-scope public defender offices and 1 managed assigned counsel (MAC) system:

(1) Founded in 2007, the Mental Health Public Defender represents indigent misdemeanor defendants with mental illness or intellectual disabilities.[2]

(2) Founded in 1971, the Juvenile Public Defender represents indigent juveniles.[3]

[1] Texas statutes grant Texas counties the power to form a public defender by creating a governmental entity or contracting with a nonprofit corporation "to provide legal representation and services to indigent defendants accused of a crime or juvenile offense." TEX. CODE OF CRIM. PROC. art. 26.044(a), (b).

[2] Mental Health Public Defender, https://www.traviscountytx.gov/criminal-justice/mental-health-public-defender.

[3] Juvenile Public Defender, https://www.traviscountytx.gov/juvenile-public-defender.

(3) Founded in 2014, the Capital Area Private Defender Service (CAPDS), a MAC, oversees and supports assigned counsel for most felony and misdemeanor cases in Travis County.[4]

Additionally, the Office of Parental Representation provides counsel for parents in Child Protective Services (CPS) cases.[5]

Like most Texas counties, Travis County's indigent defense costs have risen in recent years—from $8.7 million in FY13 to $12.25 million in FY17, a 41% increase. Per capita indigent defense expenditures have risen from $8 per Travis County resident in FY13 to $10 per resident in FY17.[6] Travis County's appointment rates are near the statewide average.[7]

The County's indigent defense system has faced renewed scrutiny in recent months. In April, the *Texas Tribune* highlighted the county's excessive caseloads: "the 10 private Austin-area attorneys with the most appointments handled an average of 533 cases in 2017, compared to an average of 428 in 2014, the year before the new system [CAPDS] began."[8] One attorney was paid for 349 felonies and 434 misdemeanors in 2017. Another was paid for 650 cases last year. Criticism of high caseloads has been accompanied by questions about the quality of representation. In a recent study of state jail felony drug possession cases in Travis County, the Council of State Governments' Justice Center (CSGJC) found that defendants with appointed counsel were far more likely to be incarcerated pretrial and, ultimately, to be

[4] Capital Area Private Defender Service, http://www.capds.org/.

[5] Office of Parental Representation, https://www.traviscountytx.gov/criminal-justice/parental-representation.

[6] The statewide per capita expenditure rate was $9.45 in FY2017.

[7] In FY17, the statewide felony appointment rate was 76%; in Travis County it was 73%. The statewide misdemeanor appointment rate was 46%; in Travis County it was 52%. Statewide appointment rates are lower than average national appointment rates, which are normally above 80%.

[8] Neena Satija, "Travis County overhauled legal representation for the poor, but lawyers are still overwhelmed," *Texas Tribune* (April 26, 2018), https://www.texastribune.org/2018/04/26/travis-county-overhauled-legal-representation-poor-lawyers-are-still-o/.

convicted than their counterparts with retained counsel.[9] The study also questioned the County's flat-fee payments to assigned counsel. Judge Eckhardt has echoed this concern: "I think there are perverse economic incentives to plea," Eckhardt told the *Austin American-Statesman*. And, according to Travis County judges and defense lawyers, assigned counsel compensation is too low: over 71% of judges and 88% of CAPDS panel attorneys said that they do not believe the current rates of compensation for court-appointed counsel are sufficient to attract qualified private counsel for court-appointed cases.[10]

III. DECISION POINTS

Creating a public defender office requires several key decisions. This section explains (1) key decision points, and (2) the assumptions built into the model below. Wherever possible, TIDC cites applicable laws, standards, or studies.

A. GOVERNANCE AND LEADERSHIP

Should the public defender have an oversight board? Model Assumption: Yes. The public defender should have an oversight board charged with selecting a chief defender, setting policy, and developing a budget.

Travis County should decide whether to form an oversight board.[11] If it chooses to create a board, the county should determine the board's composition and responsibilities. An oversight board helps ensure a public defender office's

[9] *Summary of Findings and Recommendations-Travis County District Attorney: Review of Drug Possession Case Dispositions 2016-2017 and Recidivism Analysis 2014-2015*, Council of State Governments, Justice Center 3-4 (February 23, 2018), at https://tinyurl.com/CSG-Travis.

[10] *An Evaluation of the Capital Area Private Defender Service of Travis County* 30, 40 (April 2018), Meg Ledyard, PhD.

[11] Article 26.045 states that the "commissioners court of a county . . . may establish an oversight board for a public defender's office created or designated in accordance with this chapter."

independence from undue judicial or political interference—a prerequisite for creating a public defender office according to national standards.[12] An oversight board also prevents the concentration of power in the hands of a single individual and may incorporate diverse perspectives that help guide the office. For these reasons, every public defender office created since passage of the Fair Defense Act has included an oversight board.

The board's composition should include an odd number of board members appointed from a variety of sources.[13] Members should be knowledgeable in criminal law, but free from interests that would pose a conflict with the public defender office.[14] Board responsibilities vary, but most include (1) recommending the chief defender; (2) setting policy; and (3) developing a budget. Public defender offices must be overseen by an experienced chief public defender.[15] Boards are ideally suited to select that chief defender.[16] While a chief defender usually leads and manages the office's daily operations, boards are well-suited to setting policy for the office, as well as making budget requests.

The model on pages 18-23 assumes that the office will be governed by an oversight board with the power to recommend the selection and removal of the chief public defender. The model does not include direct costs for a board, which are normally minimal.

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[12] See Principle 1, American Bar Association, *Ten Principles of a Public Defense Delivery System* (2002) (hereinafter "ABA Ten Principles"). The *Ten Principles* are the leading national standards for designing an indigent defense system that delivers competent, effective representation. The Texas Fair Defense Laws, which detail the basic requirements for every indigent defense system in Texas, track the *Ten Principles* in many respects. *See* TIDC, *Fair Defense Laws 2017-2019*, http://www.tidc.texas.gov/media/57918/tidc-fairdefenselaws-fy17-19.pdf.

[13] Article 26.045 states that members may include attorneys, judges, county commissioners, county judges, community representatives, or former clients or family members.

[14].In a related context, about half of the states with indigent defense commissions prohibit prosecutors from serving on their commission's board. Andrew Davies, Memorandum: How to Make a Politically Independent Public Defender Commission (2006), on file with TIDC.

[15] The public defender office must be directed by a chief defender who meets minimum qualifications set by statute. *See* TEX. CODE CRIM. PROC. art. 26.044(f).

[16] Boards are also well-suited to removing chief defenders, where necessary.

B. Government or Private Entity

Should the public defender office be a government entity or nonprofit corporation? Model Assumption: The office will be a government entity.

The county should consider whether its public defender office will be a county agency or a nonprofit.[17] A government agency may better coordinate with other county agencies and provide an institutional counterweight to the district and county attorney's office. A nonprofit may more readily embrace innovative practices. In most urban centers across the United States, public defender offices are government agencies. The model below assumes the office will be a government agency.

C. Existing Public and Private Defender Programs

1. Should the Travis County Juvenile Public Defender, Mental Health Public Defender, and Office of Parental Representation be incorporated into the new office? Model Assumption: Yes. All 3 offices should be incorporated as divisions of the new public defender office. 2. Should CAPDS continue to operate as an independent nonprofit? Model Assumption: Yes. Travis County should continue contracting with CAPDS to manage assigned counsel.

[17] The *Ten Principles* note that either a governmental agency or a nonprofit corporation under contract with a jurisdiction can serve as a public defender office. ABA Principle 2, note 7. State law allows for either structure, but requires a county to follow certain procedures for soliciting and selecting proposals from nonprofits, to account for both quality and cost. TEX. CODE CRIM. PROC. art. 26.044(c – e).

The volume of criminal cases in Travis County warrants the formation of a public defender office and a complementary managed assigned counsel system.[18] If the County decides to create a new public defense agency, it may choose to combine it with the existing public defender offices. A single entity could provide an overarching structure and a single point of contact for budget and policy matters. There may be upfront costs to combining agencies, but also long-term savings from shared resources.

The model on pages 18-23 assumes that the Juvenile Public Defender, Mental Health Public Defender, and Office of Parental Representation will be incorporated into the new public defender office. Although parental representation cases are civil, public defender offices in Dallas, El Paso, and many other offices nationwide handle similar cases. The model below accounts for the costs of a new public defender office but does not consider any costs or savings from restructuring the Juvenile, Mental Health, or Parental Representation programs.

The County should consider operationalizing the new public defender office before incorporating existing public defender offices. The County should consider a 2-phase approach: Phase 1 (years 1 and 2): Establishing a new office; Phase 2 (years 3 and 4): Incorporating existing offices.

The County may choose to combine a new public defender office with the MAC services provided by CAPDS. A single office could have units for both full-time defenders and for assigned counsel administration and could provide training and facilities for both groups.[19] Since CAPDS is a nonprofit and handles a greater caseload than either of the existing public defender offices, this would be a more significant restructuring of Travis County's indigent defense system, with greater upfront costs. To isolate the costs of a new public defender office, the model below assumes CAPDS will, for the time being, continue to operate as an independent program.

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[18] ABA Principle 2.

[19] The Committee for Public Counsel Services, Massachusetts' statewide indigent defense provider, is structured this way, and is a national leader in managed assigned counsel representation. Committee for Public Counsel Services, *Who We Are and How We Are Structured*, https://www.publiccounsel.net/hr/divisions/.

D. CASELOADS

What should the maximum attorney caseload be? Model Assumption: Attorneys will handle no more than 138 felony cases or 239 misdemeanor cases per year.

When attorneys represent too many clients, they must often jettison core legal tasks, including research, investigation, client communication, and filing pertinent motions.[20] An assigned counsel system with a flat-fee payment structure incentivizes attorneys to accept too many cases, often resulting in substandard quality.[21] Given a salary and benefits, public defenders do not face the same economic incentives—assuming that caseloads are controlled. Texas public defender offices are required to identify maximum allowable caseload limits for each attorney in the office[22] and to refuse appointments that would violate these limits.[23]

TIDC has published evidence-based *Guidelines for Indigent Defense Caseloads*.[24] The model below adjusts the Guidelines for public defender offices to account for in-house investigators, whose support allows attorneys to spend less time on that aspect of representation and provide representation in more cases. Based on the adjusted Guidelines, the model below assumes that each attorney in a new public defender office will handle no more than 138 felony cases or 239 misdemeanor cases per year.

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[20] ABA Principle 5.

[21] Low fees exacerbate this problem, making it difficult for an attorney to earn a living while providing quality representation in appointed cases. *See* Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* at 4 (2011).

[22] TEX. CODE CRIM. PROC. art. 26.044(c-1)(3). To receive grant funding from TIDC, a public defender office "must have defined caseload/workload standards." Competitive Discretionary Grant Program Request for Applications at 15, http://tidc.texas.gov/media/57909/fy19-discretionary-grant-rfa.pdf (hereinafter "FY19 Discretionary Grant RFA").

[23] TEX. CODE CRIM. PROC. art. 26.044(j).

[24] Carmichael et al., Public Policy Research Institute at Texas A&M University, *Guidelines for Indigent Defense Caseloads* (2015), http://www.tidc.texas.gov/media/31818/150122_weightedcl_final.pdf.

The model also assumes that managers—the Chief Defender, Deputy Chief Defender, and Division Directors—will carry a 10% caseload, dedicating most of their time to supervision, administration, training, and leadership.

E. CASE COMPOSITION

What proportion of Travis County criminal cases should the office handle?

Model Assumption: The office will provide representation in adult felony and misdemeanor cases, juvenile cases, mental health felony and misdemeanor cases, and parental representation cases. An immigration attorney and research attorney will assist trial attorneys. The model further assumes the office will not provide representation in appeals, capital cases, or at magistration, but the County should explore adding these divisions to the office later. The expanded office will handle 30% of all adult felony and misdemeanor cases in Travis County.

The County should determine the office's scope, including the types of cases that will be covered, as well as the percentage of cases covered. The model below assumes that, during its first 4 years, the office will handle 30% of adult felony and misdemeanor trial-level cases—approximately 4,700 misdemeanors and 2,700 felonies per year—allowing for the possibility of gradual expansion according to the county's future needs.[25] The model further assumes that, in its first 4 years, the office will not provide appellate or capital representation, nor will it provide representation at magistration, though the office could later expand its scope.

[25] When Harris County established a public defender office in 2011, the office provided high-quality representation in only about 6% of all cases, and was able to demonstrate the effectiveness of its model: better results for its clients than those of private assigned counsel. Fabelo et al., Council of State Governments Justice Center, *Improving Indigent Defense: Evaluation of the Harris County Public Defender* at 32 (2013), http://tidc.texas.gov/resources/publications/reports/program-evaluations/harris-county-public-defender-evaluation.aspx (hereinafter "HCPD Evaluation").

Based on TIDC caseload guidelines, to provide competent representation in 30% of adult felony and misdemeanor cases in Travis County, a new public defender office will need to hire the full-time equivalent of 20 misdemeanor-level attorneys and 20 felony-level attorneys, as well as support staff and managers. This staffing level is achievable within the first year, but the County may choose to take multiple years to ramp up.[26] TIDC's model assumes CAPDS will continue to provide representation in 70% of appointed adult felony and misdemeanor cases.[27]

[26] In its first year, the Harris County Public Defender hired 4 attorneys to handle 1,400 misdemeanor mental health cases and 11 attorneys to handle about 1,700 felony trial cases per year, as well as 10 appellate attorneys, 7 juvenile attorneys, support staff, and managers. See HCPD Evaluation, note 25 at 14-15.

[27] Although the model does not include staff for appellate, capital, or pretrial divisions, the County should consider how defenders in each specialty area would contribute to the justice system. Appellate defenders could not only improve representation on appeal, but would also assist trial attorneys with motions, jury instructions, and legal research before and during trial (and after trial with motions for new trial). Representation in capital cases is not currently overseen by CAPDS, but a defender office could include a dedicated team for these cases (including full-time investigators). Finally, defenders providing early representation, beginning at or before magistration, would help to safely reduce jail populations and ensure there is probable cause to detain arrestees. Currently, three counties in Texas – Bexar, Cameron, and Harris – provide representation at magistration. Bexar County has found that, as compared to presentations by pretrial services alone, this representation increases rates of release and compliance with bond conditions (that is, reduces failures to appear in court). *First Annual Review of Public Defender Representation at Central Magistration* (2016), https://www.equitasproject.org/wp-content/uploads/2018/05/Bexar_MHPD_Report-FINAL-10-19-16.pdf. These findings are consistent with national studies and constitutional law. The Constitution Project, *Don't I Need a Lawyer? Pretrial Justice and the Right to Counsel at First Judicial Bail Hearing* (2015), https://constitutionproject.org/wp-content/uploads/2015/03/RTC-DINAL_3.18.15.pdf.

F. Staffing and Salaries

1. What should new staff be paid?

Model Assumption: Public defender employees will have pay parity with their prosecutorial counterparts. The pay schedule used in the model is based on the County Attorney's Office pay schedule as provided by the Travis County Planning and Budget Office.

2. What should be the staffing levels for investigators, caseworkers, support staff, immigration attorneys, research attorneys, and managers?

Model Assumption: Staffing ratios will be:

- 1 investigator per 7 trial attorneys (6 total)
- 1 alternative disposition specialist per 10 trial attorneys (4 total)
- 1 support staff per 5 trial attorneys (8 total)
- 1 immigration attorney per 20 trial attorneys (2 total)
- 1 research attorney per 40 trial attorneys (1 total)
- 1 division director per division (2 total)
- 1 chief, 1 deputy chief, and 1 training director

The County should decide (a) what it should pay staff at a new public defender office, and (b) what kind of staff the office will employ. As to pay, the County may look to the Travis County District and County Attorney's Offices as guides. National standards require pay and resource parity between the prosecution and defense functions.[28] The model below assumes that public defender staff will be paid roughly

[28] ABA Principle 8.

the same as their counterparts in the County Attorney's Office, as captured in Table 1, below.[29]

Resource parity should extend to support staff, including investigators, caseworkers, and administrative assistants.[30] Investigators are essential to examining the prosecution's case and establishing defenses. Defense team alternative disposition specialists provide specialized services critical to effective representation and beyond, such as creating plans for mental health and substance abuse treatment, housing and other services in the community.[31] Support staff dedicated to tasks like filing, scheduling, finance, and information technology are necessities for any office.

Resource attorneys and managers also offer critical support to trial attorneys. Under *Padilla v. Kentucky*,[32] defense attorneys have a constitutional obligation to inform their clients of the immigration consequences of criminal convictions; a dedicated immigration attorney can help fulfill this duty by assisting trial attorneys with complex immigration matters and consulting with clients directly. A research attorney assists with motions drafting and other legal research. Division directors supervise all staff and monitor their performance and workloads.[33]

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[29] The County Attorney prosecutes misdemeanor cases, while the District Attorney prosecutes felonies; pay by attorney level, however, is about the same for both offices. See https://salaries.texastribune.org/travis-county/departments/county-attorney/; https://salaries.texastribune.org/travis-county/departments/district-attorney/. Pay for prosecutors is also about the same, by attorney level, as that for Travis County public defenders. See https://salaries.texastribune.org/travis-county/departments/juvenile-public-defender/; https://salaries.texastribune.org/travis-county/departments/justice-planning/.

[30] ABA Principle 8.

[31] The Travis County Mental Health Public Defender utilizes this team-based model to achieve its successful outcomes. Travis County Justice Planning, *Travis County Mental Health Public Defender Office* at 4 (2016), https://www.equitasproject.org/wp-content/uploads/2018/05/Travis-County-MHPD-Evaluation-2016.pdf . This model is nationally recognized as a cost-effective strategy for pretrial diversion. Kentucky, for example, uses defense-team alternative sentencing workers to create diversion plans; for every $1.00 spent on this program, Kentucky has received a $3.76 return on investment from avoided incarceration costs. Cape & Walker, *SFY 2015 Evaluation Report: Department of Public Advocacy Alternative Sentencing Worker Program* (2017).

[32] 559 U.S. 356 (2010).

[33] The *Ten Principles* cite the NSC Guidelines' recommended ratio of 1:10 supervisors to attorneys.

The county should identify an appropriate ratio of support staff, resource attorneys, and managers to trial attorneys.[34] The model below assumes the following ratios:

- 1 investigator per 7 trial attorneys (6 total)
- 1 caseworker per 10 trial attorneys (4 total)
- 1 support staff per 5 trial attorneys (8 total)
- 1 immigration attorney per 20 trial attorneys (2 total)
- 1 research attorney per 40 trial attorneys (1 total)
- 1 division director per new division (2 total)

In addition to the above staff, the office also includes a chief, a deputy chief, and a training director.

[34] TIDC's 2008 *Blueprint for Creating a Public Defender Office in Texas* offers a ratio of 1:5 investigators to attorneys and 1:5 staff assistants to attorneys. The *Ten Principles* cite the 1976 National Study Commission on Defense Services' recommended minimum ratio of 1:3 investigators to attorneys. For a regional and contemporary comparison, the Harris County Public Defender began its office in 2011 with a ratio of roughly 1:4 for investigators and 1:5 for social workers across its misdemeanor mental health and felony divisions, and about 1:3 for administrative support staff across all divisions. HCPD Evaluation, note 25 at 15.

Table 1. Staffing and Pay Comparison Between the County Attorney and Public Defender Model

County Attorney		Title	[Public Defender]	
Salary	#		#	Salary
$173,918	1	County Attorney [Chief Defender]	1	$155,000
$174,325	2	Deputy Chief	1	$134,000
$135,514	8	Division Director	2	$118,000
		[Training Director] (Division Director Pay Schedule)	1	$118,000
$109,976	32	Attorney VII	0	--
$97,912	4	Attorney VI [Felony Defender]	20	$96,000
$91,497	9	Attorney V	0	--
$79,905	7	Attorney IV [Immigration Attorney] [Research Attorney]	3	$78,000
$72,862	6	Attorney III/ [Misdemeanor Defender]	10	$73,000
$65,385	2	Attorney II/[Misdemeanor Defender]	5	$64,000
$60,953	7	Attorney I/[Misdemeanor Defender]	5	$60,000
$74,877	7	Investigator	6	$60,000
--	0	[Alternative Disposition Specialist] (Social Worker)	4	$49,000
$42,576	27	Legal Secretary [Support Staff]	8	$40,000
$9,568,672	112		66	$5,023,000

Note: Salary levels for public defender employees are based on the salary schedule for the County Attorney's Office. Some County Attorney salaries higher due to longevity pay. Totals for the County Attorney are totals only for the positions listed and do not include all County Attorney staff. Disparate staffing totals for each agency reflect different workloads. Salaries at the District Attorney's Office appear to be the same based on a review of salaries through the Texas Tribune*'s Government Salaries Explorer, https://salaries.texastribune.org/.*

G. OPERATIONS

1. What should be the budget for operating expenses, including office space, equipment, expert witnesses, training, travel, and technology? Model Assumption: The model is based on cost estimates provided by the Travis County Planning and Budget Office, including (1) annual fringe benefits ranging from $21,000 to $49,000 per employee; (2) ongoing annual operating expenses ranging from $2,110 to $4,960 per employee; (3) one-time expenses for office furniture, computers, phones, and vehicles (for investigators) ranging from $7,464 to $50,078; and (4) office space will be determined.

There should also be parity between the defense and prosecution in facilities, technology, and other resources.[35] Overhead expenses are another area where a public defender office creates economies of scale. The following operating expenses are based on estimates provided to TIDC by the Travis County Planning and Budget Office.

Fringe benefits: The annual fringe benefits range from $21,000 to $49,000 per employee.[36]

Operating Costs: Ongoing annual operating expenses will range from $2,110 to $4,960 per employee. One-time expenditures in the first year include office furniture, computers, and phones, for all employees.

Training and Travel: Public defender offices can use their staff and facilities to provide in-house continuing legal education to their attorneys and to the wider legal community.[37] A public defender can be an institutional resource and hub for

[35] ABA Principle 8.

[36] Higher paid employees have a higher amount per year in fringe benefits, but fringe benefits make up a smaller percentage of their salary compared to lower paid employees.

[37] The Harris County Public Defender presented 63 CLE programs attended by 1,868 attorneys in its first two years of operation. In the same period, HCPD staff presented at other organizations' programs more than 60 times. HCPD has used federal and foundation funding to develop the Future Assigned

learning that improves the quality of representation for all appointed counsel.[38] Defenders working together in an office benefit from informal mentoring, case consultation, and day-to-day observation. A close professional network helps newer attorneys, especially, improve their skills and avoid costly mistakes. The model below assumes directors will carry only modest caseloads so that most their time is dedicated to supervising and training other staff. TIDC's model includes from $1,000 to $3,000 in dedicated funding for training or travel, which varies based on the employees' needs. A full-time training director would be appropriate for an office of the proposed size and is included in the model.

Technology: The structure of a public defender office lends itself to ongoing, standardized performance reviews of all staff. An office that uses an up-to-date case management system can make more rigorous, data-driven assessments of quality and costs,[39] which allow the oversight board and the county to scrutinize performance and funding requests thoroughly.[40] Investment in technology can also create savings by automating tasks and saving valuable staff time.

Expert Witnesses: An expert witness budget is not currently built into the model but may be included in later models.

Office Space: It is not clear where the PDO would be housed. If the office is housed in existing county office space, remodeling may be necessary. If housed in private office space, additional expenses may be required.[41]

Counsel Training (FACT) program, which provides intensive training and 75 hours of mentorship for new private assigned attorneys. See HCPD Evaluation, note 25at 38-39.

[38] ABA Principle 9.

[39] Mark Erwin and Meg Ledyard for the National Legal Aid & Defender Association, *Increasing Analytics Capacity A Toolkit for Public Defender Organizations* (2016), http://www.nlada.org/sites/default/files/NLADA%20Increasing%20Analytics%20Capacity%20Toolkit%202016_0.pdf.

[40] To receive grant funding from TIDC, a public defender office "must have internal case management/tracking controls sufficient to monitor attorney caseload/workload and "must have ability to produce other reports that enable the office to evaluate its own performance and demonstrate its cost-effectiveness to other local defense systems." TIDC, FY19 Discretionary Grant RFA, http://tidc.texas.gov/media/57909/fy19-discretionary-grant-rfa.pdf.

[41] Reimbursement for rent and costs related to office build-outs are considered on a case-by-case basis for TIDC's Discretionary Grant Program.

Table 2. Estimated Operating Expenses Per Position

Position	Ongoing Travel/ Training	Ongoing Cellular Allowance	Ongoing Office Equipment/ Supplies	Ongoing Subscrip -tions	Subtotal Ongoing Costs	OT Office Furniture	OT Computer & Phone	OT Law Enforce- ment Equip	OT Vehicle	Subtotal One-time Costs	Total
Attorney I-VII	$ 2,000	$ 360	$ 1,000	$ 600	**$ 3,960**	$ 3,000	$ 5,064			**$ 8,064**	**$ 12,024**
Division Director/ Chief	$ 3,000	$ 360	$ 1,000	$ 600	**$ 4,960**	$ 3,000	$ 5,064			**$ 8,064**	**$ 13,024**
Legal Secretary-Sr	$ 1,000		$ 750		**$ 1,750**	$ 3,000	$ 5,064			**$ 8,064**	**$ 9,814**
Social Worker (Alternative Disposition Specialist)	$ 1,000	$ 360	$ 750		**$ 2,110**	$ 3,000	$ 4,464			**$ 7,464**	**$ 9,574**
Investigator	$ 1,500	$ 360	$ 750	$ 1,000	**$3,610**	$ 3,000	$ 10,878	$ 1,200	$ 35,000	**$ 50,078**	**$ 53,688**
Total	**$ 10,500**	**$ 1,800**	**$ 6,000**	**$ 2,200**	**$20,500**	**$ 24,000**	**$ 44,526**	**$ 1,200**	**$35,000**	**$104,726**	**$125,226**

Source: Travis County Planning and Budget Office

IV. MODEL FOR DISCUSSION PURPOSES

Based on these assumptions, TIDC has developed a model for discussion purposes. TIDC offers this model only as a springboard for conversation—not as a prescription. Based on the averages from the last three years, we can expect that about 50% of the 31,000 misdemeanor cases filed each year and about 72% of the 13,000 felony cases filed each year will be found indigent. The model assumes felony and misdemeanor cases not assigned to the public defender will be assigned to CAPDS with FY2017 costs per case ($190 per misdemeanor case and $513 per felony case).[42]

Fully staffed, this model includes a total of 66 staff, 48 of whom are attorneys. The model assumes two *Padilla* attorneys, one research attorney, 6 staff

[42] As noted earlier in this study, CAPDS assigned counsel fees are very low and well below the statewide average on a per case basis. The fee schedule offered may need to be increased. This would further increase the county's total indigent defense expenditures while also lessening the cost differential with a new public defender office.

investigators, 4 alternative disposition specialists, 8 office support staff, and 2 division directors. There is also a chief defender and a training director.

The annual cost of the office is approximately $7.3 million when the office is fully operational. An additional $2 million is needed to pay for the existing Juvenile Public Defender (JPD), $1 million for the Mental Health Public Defender (MHPD), and $1.1 million for the Office of Parental Representation (OPR), based on Travis County's adopted FY2018 budget. An additional $6.8 million is expected to pay for cases assigned through the managed assigned counsel (MAC) program, including capital murder cases and appeals. In summary, the total annual cost of indigent defense (and Office of Parental Representation) under this model is expected to be approximately $18.4 million, or $4.5 million more than the existing indigent defense system.[43]

It is reasonable to assume that the office will not be fully staffed and operational during the first year. As such, the office will not accept a full 30% of the misdemeanor and felony cases, and CAPDS will assign counsel in relatively more cases. If the public defender office only accepts 15% of cases in the first year, its first-year costs would be about $5 million, which would include about $840,000 in start-up expenditures.[44]

[43] The cost of the "existing indigent defense system"—$13.9 million—is higher than Travis County's FY2017 IDER "Total Indigent Defense Expenditures" because the IDER does not include FY2018 budget increases for the Juvenile Public Defender and Mental Health Public Defender, and does not include the FY2018 budget for the Office of Parental Representation.

[44] These estimates assume that additional year 1 expenditures remain the same, whether the office takes 15% or 30% of cases in the first year. We assumed that the county would make all one-time purchases for such items as computers, furniture, and phones, in the first year to take advantage of TIDC's 80% grant during the first year.

Table 3. Case and Cost Estimate for Travis County Public Defender Office

Model: 30% of Cases are Assigned to the Public Defender					
1. Caseload		**Total**	**Msd Added**	**Non-Cap Fel Added**	**Appeals Paid**
A. Total New Cases Added					
Travis County		43,839	31,151	12,689	n/a
B. Percent of Total Cases Added that are Indigent			50%	72%	100%
Estimated Total Indigent Defense Cases		24,833	15,679	9,094	60
% going to proposed public defender			30%	30%	0%
% going to mh public defender			n/a	n/a	
C. Public Defender Caseload		7,432	4,704	2,728	0
Cases to MAC		17,401	10,975	6,365	60
2. Staff					
Proposed Public Defender Cases		7,432	4,704	2,728	0
Attorney Caseloads based on the Weighted Caseload Study			**239**	**138**	**31**
Number of Line Attorneys Needed		40	20	20	0
Number of Immigration Attorneys		2	1.0	1.0	
Number of Research Attorneys		1			
Number of Investigators (1 per 7 attorneys)		6	3	3	0
Number of Alternative Disposition Specialists (1 per 10 attorneys)		4	2	2	0
Number of Office Support Staff (1 per 5 attorneys)		8	4	4	0
3. Draft Budget					
	Staff	**Total**	**Misdemeanor**	**Felony**	**Appeals**
Total Staff Salaries + Benefits	66	$7,091,000	$3,198,000	$3,893,000	
Chief Defender ($155K salary + $49K benefits)	1	$ 204,000	$ 102,000	$102,000.00	
Deputy Chief ($134K salary+$43K benefits)	1	$ 177,000	$88,500	$88,500	
Div. Director (1 per division; $118K salary+$39,000 benefits)	2	$314,000	$157,000	$157,000	
Training Director ($118K salary+$39K benefits)	1	$157,000	$ 78,500	$78,500	
Felony Defender (Attorney VI-$96K salary+$34K benefits)	20	$2,600,000		$2,600,000	
Misdemeanor Defender (Attorney III-$73K salary+$29K benefits)	10	$1,020,000	$ 1,020,000	-	-
Misdemeanor Defender (Attorney II-$64K salary+$27K benefits)	5	$455,000	$455,000		
Misdemeanor Defender (Attorney I-$60K salary+$26K benefits)	5	$430,000	$430,000		
Appeals Defender	0				

Juvenile Defender (keep staffing same as today)	0	n/a			n/a
Immigration Attorney (Attorney IV-$78K salary+$30K benefits)	2	$216,000	$108,000	$108,000.00	-
Research Attorney (Attorney IV-$78K salary+$30K benefits)	1	$108,000	$ 54,000	$54,000.00	
Investigator ($71K salary+$30K benefits)	6	$606,000	$303,000	$303,000.00	
Alternative Disposition Specialist ($49K salary+$30K benefits; Social Worker)	4	$316,000	$ 158,000	$158,000.00	
Support Staff ($40K salary+$21K benefits; Legal Secretary Sr.)	8	$ 488,000	$ 244,000	$244,000.00	
Operating Expenses (based on "Operating Expenses" sheet)		$ 239,180	$ 119,590	$119,590.00	
Office Space (TBD)			-		
Estimated Total PD		**$7,330,180**	$ 3,317,590	$ 4,012,590	
Estimated cost per case with PD		$ 986.32	$705.31	$ 1,470.86	n/a

POTENTIAL TIDC GRANT FUNDING

TIDC's Discretionary Grant Program helps counties establish public defender offices. Discretionary grants normally last for four years. Grant funding typically pays for 80% of the public defender office costs in the first year, and goes down 20% each year for years two, three, and four. Over those four years, TIDC pays for approximately 50% of the public defender office costs.

Following is an estimate of the costs that TIDC could cover based on a public defender office with a $7.3 million annual budget with no "ramp up" phase, i.e. the office would accept 30% of the cases every year, including the first year:

Table 3. Estimated Discretionary Grant Awards for Public Defender Office Accepting 30% of Cases Every Year

Grant Year	State Discretionary Grants
Year 1 (80%)	$ 6,365,600
Year 2 (60%)	$ 4,398,108
Year 3 (40%)	$ 2,932,072
Year 4 (20%)	$ 1,466,036
Total over 4 Years	$ 15,161,816

Grant funding is contingent on approval by a grant review committee and a vote of the full TIDC Board. In addition to Discretionary Grant funding from TIDC, Travis County will continue to receive Formula Grant funding to reimburse the county for its other indigent defense expenditures, which typically amount to 12-to-15% of expenses.

In year one, the added costs of the office, including start-up costs—$5.4 million—would be more than offset by a TIDC grant. Almost all of the costs in year two would be offset by TIDC as well. Over the life of the grant, TIDC could award approximately $15.2 million in Discretionary Grants, assuming these cost estimates bear out and TIDC awards the grant. While added costs over four years would be about $19 million, much of that would be offset by TIDC Discretionary and Formula Grants.

If the office accepted a lower caseload in year 1 during the "ramp up" phase, costs (and grants) would be reduced in year 1, but remain the same for years 2

through 4. In such a scenario, the estimated total costs for year one would be just over $5 million. The grant would be approximately $4 million, with the county responsible for approximately $1 million.[45]

Table 4. Estimated Discretionary Grant Awards for Public Defender Office Accepting 15% of Cases in Year One; 30% of Cases in Years Two-to-Four

Grant Year	State Discretionary Grants
Year 1 (80%)	$ 3,836,912
Year 2 (60%)	$ 4,398,108
Year 3 (40%)	$ 2,932,072
Year 4 (20%)	$ 1,466,036
Total over 4 Years	$ 12,633,128

Under this scenario, the added cost to the indigent defense system in year one from establishing the public defender office would be approximately $3.4 million, which would be more than offset by the $3.8 million grant. Over the life of the grant, approximately $12.6 million in Discretionary Grants would be awarded. Net added costs to the County over four years—when offsetting projected TIDC Discretionary and Formula Grants are included—would only be about $425,000. When the county is paying the full cost of the new system in year 5 (including the Office of Parental Representation cases), its costs will be about $3.5 million more per year than the existing system.

V. CONCLUSION

TIDC applauds Travis County for the steps it is taking to improve indigent defense. TIDC has determined that a Travis County Public Defender Office is both feasible and desirable. The office would improve quality, accountability, data, and efficiency. TIDC stands ready to offer technical and possibly financial assistance.

[45] These estimates assume that additional year 1 expenditures remain the same, whether the office takes 15% or 30% of cases in the first year. We assumed that the county would make all one-time purchases for such items as computers, furniture, phones, and vehicles for investigators in the first year to take advantage of TIDC's 80% grant during the first year.

Douglas Wilson

Colorado State Public Defender (Retired) / Aurora
Municipal Public Defender

Doug has spent his career as a criminal defense attorney serving the poor in Colorado. In 1970, the shootings at Kent State were a call to action for him to fight for social justice and human rights. Growing up in Ohio, that was a defining moment for him as he chose to work for people accused of crimes who could not afford counsel. He has dedicated much of his legal career to fighting the death penalty and has represented the accused in capital cases across the state. Doug's passion and conviction to help and represent people who suffer from mental health conditions has also defined his career.

On November 1, 2006, Doug was appointed as the sixth Colorado State Public Defender, where he was responsible for leading a state-wide public defender system with a $90 million-dollar budget, over 800 employees and 170,000 active cases. He was honored by the Public Defender System on two occasions for his steadfast service to his clients and his ongoing work in opposition to the death penalty. He received the prestigious David F. Vela Award in 1998 and was chosen as Attorney of the Year in 2001. In 1999 the Colorado Criminal Defense Bar honored him with the Jonathan Olom Award. Doug retired July 31, 2018 after leading the Colorado system for 12 years.

On January 8, 2020, Doug was appointed as the Chief Public Defender for the City of Aurora, CO.

Douglas K. Wilson
Chief Public Defender
Aurora (CO) Public Defender's Office

Testimony Before President's Commission on Law Enforcement and the Administration of Justice

Panel on The Role of Public Defenders
June 2, 2020

My name is Doug Wilson. I am the Chief Public Defender for the City of Aurora, Colorado. I have been a public defender for over three decades. In August of 2018, I retired as the Public Defender for the State of Colorado after 12 years and came out of retirement in January to accept my present position in Aurora. I am also a member of the National Association For Public Defense and Chair of NAPD's System's Builders Committee.

Mr. Chair and members of the President's Commission, thank you for inviting us to address you on the critical role that Public Defenders play in the Criminal System across the Country. In particular, I am going to address the need for 1) consistent and sufficient funding; 2) enforceable workload caps; and 3) consistent and sufficient training to ensure that we meet our Constitutionally mandated representation requirements.

Since the United States Supreme Court first recognized that the Sixth Amendment to the United States Constitution required governmental entities to ensure that everyone charged with a criminal offense that included the possibility of the loss of liberty was provided with effective assistance of counsel, (*Powell v. Alabama*, 287 U.S. 45 (1932); *Gideon v. Wainwright,* 372 U.S. 335 (1963*); Rothgery v. Gillespie County,* 554 U.S. 191 (2008); *McMann v. Richardson*, 397 U.S. 759 (1970); *U.S. v. Cronic*, 466 U.S. 648 (1984); *Strickland v. Washington,* 466 U.S. 668 (1984)), local and state governments have struggled with how to fund indigent defense delivery systems. As a result, different and completely divergent systems have developed

over the years. (Because over 90 percent of the criminal cases filed in the United States are at the State and Local level, I am not discussing federal public defense). We have municipal, county and state public defenders; we have managed assigned counsel, low bid contracts and some delivery systems that are straight court appointments. Even in the structured systems, some public defenders are elected; some appointed by the executive branch; some by the judicial and yet others by a commission, who are independent and others who are not. Bottom line is that we have no federal mandate on how the delivery of indigent defense should be funded and provided at the state and local level. This lack of direction and support at the federal level has caused severe resource deficiencies, a lack of sustainable workloads and inconsistent if not non-existence training standards.

In an effort to address these issues (and others), the American Bar Association Standing Committee on Legal Aid and Indigent Defendants published the *Ten Principles of a Public Defense Delivery System* (February 2002). (See Attachment 1, Pg. 1).

Principle 8: "There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system."

Rarely if ever does parity exist between the prosecution and indigent defense counsel with respect to financial resources, salaries or staffing. As a result, quality of services, recruitment and retention are impacted significantly. Yet, you will rarely find a more dedicated and compassionate group of people than public defender employees. While taking nothing away from law enforcement, fire departments, paramedics and medical personnel, public defenders have continued to be the unsung heroes of the criminal system throughout this pandemic. Mental health workers, grocery store employees, social workers and other essential service employees have put themselves in harms way for all of us, but, public defenders have as well. Many, with no recognition, continued to go to court every day, in masks, arguing to get and keep poor people out of jails and prisons where COVID-19 has exploded. (See Attachment 2, *Public Defenders: Justice Systems' First*

Responders For People Open Letter To America, May 2, 2020; National Association For Public Defense, Derwyn Bunton, Chair, NAPD Steering Committee; Ernie Lewis, Executive Director, NAPD)(NAPD).

Yet, one of the first agencies being cut, and with little to no grant funding help, are the public defenders. In Louisiana, public defenders are being furloughed; in Virginia, badly needed new positions were taken away; in Georgia, 14% cuts are being requested; and in my jurisdiction we have been asked to look at cuts of 3, 5 and 10%, which we cannot possibly do and continue to provide any semblance of effective assistance of counsel.

Resolution: A federally supported, standardized program ensuring parity with the prosecution for resources, salaries and staffing for indigent defense delivery systems in each state. Perhaps through the establishment of a Defender General with the Federal Government.

Principle 5: **"Defense counsel's workload is controlled to permit the rendering of quality representation."**

In 1973 the first attempt to improve Public Defense systems through **CASELOAD** caps appeared in a report issued by the National Advisory Commission on Criminal Justice Standards and Goals (NAC Standards), where the recommended CASELOADS per attorney were

No more than 150 felonies per year;

No more than 400 misdemeanors per year;

No more than 200 juvenile cases per year.

(Attachment 3, American Council of Chief Defenders Statement on Caseload and Workloads, April 24, 2007, at pg. 366).

In the almost 50 years since the NAC Standards, it has become clear and the research supports, that while the NAC Standards addressed a previously unaddressed issue, using CASELOAD and not WORKLOAD standards or caps has exacerbated already under resourced systems. The more recent and relevant research, for the prosecution and defense, supports the need for a national WORKLOAD study, with standards, caps and funding. See https://www.publicdefenders.us/files/NAPD_workload_statement.pdf. Not all cases of similar types warrant the same amount of work. The advent of new forensic sciences, body cams, complexity of cases, new criminal offenses and more charges per case have increased the WORKLOAD of public defenders significantly. While groups such as NAPD have led the way in addressing the need for workload studies, the diverse nature of public defense delivery systems have made it increasingly difficult to standardize workloads. Therefore, a national workload analysis would benefit not only the indigent defense providers, but also the prosecution and the bench, as well as policy makers and funders at the local and state level by establishing a consistent and data driven staffing and resource model.

Workloads are at a crisis level. Failure to address them immediately will result in more convictions being overturned; slower movement of cases for victims and defendants; more ineffective assistance claims sustained and more overcrowding in our penal institutions. See

file:///C:/Users/antid/AppData/Local/Packages/microsoft.windowscommunicationsapps_8wekyb3d8bbwe/LocalState/Files/S0/18330/Attachments/ABA.Ethics06-441[56638].pdf

Resolution: Federally funded workload study to establish workload standards for the indigent defense community as well as the prosecution and the judiciary.

Principle 6: "Defense counsel's ability, training and experience match the complexity of the case".

The practice of criminal defense has become more complex each year. For instance, failure to properly advise as to the immigration consequences of a conviction can be ineffective assistance of counsel. *Padilla v. Kentucky*, 559 U.S. 356 (2010). DNA, capital jury selection, enhanced sentences, new drug offenses, mandatory sentencing as well as individual jurisdiction's procedural changes and nuances, have made the constitutionally mandated effective assistance even more difficult without extensive and timely training. While the NAPD has become the leader in addressing issues and concerns for indigent defense leaders, NAPD is a membership organization that operates on a shoestring budget, dependent upon dues from organizations whose budgets are now being cut.

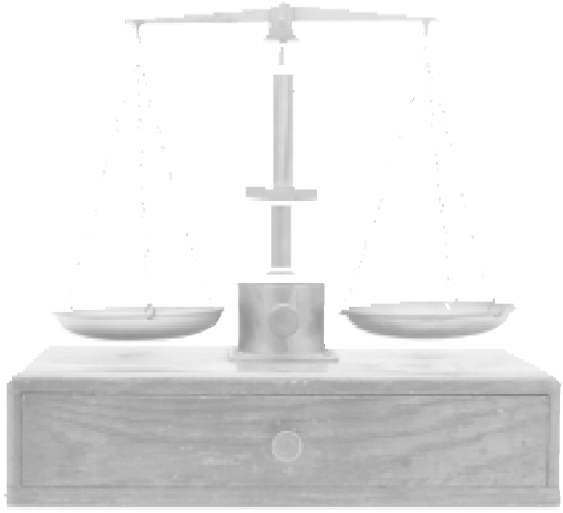
Resolution: A federally supported, standardized training program ensuring quality and timely training for indigent defense delivery systems in each state. Perhaps through the establishment of a Defender General with the Federal Government.

To conclude, indigent defense is a critical and constitutionally mandated component of our criminal system. Threats to the Right to Counsel are real for a variety of reasons, but none more concerning than as a result of insufficient and inadequate funding; staffing and training. All can be addressed with appropriate attention and funding at the federal level, again, perhaps through the establishment of Defender General.

If I can be of any further service or if I can provide any additional information, please do not hesitate to contact me.

Douglas K. Wilson

Chief Public Defender
Aurora (CO) Public Defender
14999 E. Alameda Pkwy.
Aurora, CO 80012
dkwilson@auroragov.org
(303)739-6558



Ten Principles

Of a Public Defense Delivery System

Februar y 2002

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On Legal Aid And Indigent Defendants

2001-2002

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Ten Principles

Of a Public Defense Delivery System

Februar y 2002

Approved by American Bar Association House of Delegates, February 2002. The American Bar Association recommends that jurisdictions use these Principles to assess promptly the needs of public defense delivery systems and clearly communicate those needs to policy makers.

INTRODUCTIOn

The *ABA Ten Principles of a Public Defense Delivery System* were sponsored by the ABA Standing Committee on Legal and Indigent Defendants and approved by the ABA House of Delegates in February 2002. The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney. The more extensive ABA policy statement dealing with indigent defense services is contained within the ABA Standards for Criminal Justice, *Providing Defense Services* (3d ed. 1992), which can be viewed on-line (black letter only) and purchased (black letter with commentary) by accessing the ABA Criminal Justice Section homepage at http://www.abanet.org/crimjust/home.html.

ACKNOWLEDGMENTS

The Standing Committee on Legal Aid and Indigent Defendants is grateful to everyone assisting in the development of the *ABA Ten Principles of a Public Defense Delivery System*. Foremost, the Standing Committee acknowledges former member James R. Neuhard, Director of the Michigan State Appellate Defender Office, who was the first to recognize the need for clear and concise guidance on how to design an effective system for providing public defense services. In 2000, Mr. Neuhard and Scott Wallace, Director of Defender Legal Services for the National Legal Aid and Defender Association, jointly produced a paper entitled "The Ten Commandments of Public Defense Delivery Systems," which was later included in the Introduction to Volume I of the U.S. Department of Justice's Compendium of Standards for Indigent Defense Systems. The *ABA Ten Principles of a Public Defense Delivery System* are based on this work of Mr. Neuhard and Mr. Wallace.

Special thanks go to the members of the Standing Committee and its Indigent Defense Advisory Group who reviewed drafts and provided comment. Further, the Standing Committee is grateful to the ABA entities that provided invaluable support for these Principles by co-sponsoring them in the House of Delegates, including: Criminal Justice Section, Government and Public Sector Lawyers Division, Steering Committee on the Unmet Legal Needs of Children, Commission on Racial and Ethnic Diversity in the Profession, Standing Committee on Pro Bono and Public Services. We would also like to thank the ABA Commission on Homelessness and Poverty and the ABA Juvenile Justice Center for their support.

L. Jonathan Ross
Chair, Standing Committee on
Legal Aid and Indigent Defendants

ABA Ten Principles Of A Public Defense Delivery System

Black Letter

1 **The public defense function, including the selection, funding, and payment of defense counsel, is independent.**

2 **Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.**

3 **Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.**

4 **Defense counsel is provided sufficient time and a confidential space within which to meet with the client.**

5 **Defense counsel's workload is controlled to permit the rendering of quality representation.**

6 **Defense counsel's ability, training, and experience match the complexity of the case.**

7 **The same attorney continuously represents the client until completion of the case.**

8 **There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.**

9 **Defense counsel is provided with and required to attend continuing legal education.**

10 **Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.**

ABA Ten Principles Of A Public Defense Delivery System

With Commentar y

1 **The public defense function, including the selection, funding, and payment of defense counsel,[1] is independent.** The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.[2] To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.[3] Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.[4] The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.[5]

2 **Where the caseload is sufficiently high,[6] the public defense delivery system consists of both a defender office[7] and the active participation of the private bar.** The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services.[8] The appointment process should never be *ad hoc*,[9] but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.[10] Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.[11]

3 **Clients are screened for eligibility,[12] and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.** Counsel should be furnished upon arrest, detention, or request,[13] and usually within 24 hours thereafter.[14]

4 **Defense counsel is provided sufficient time and a confidential space within which to meet with the client.** Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.[15] Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client.[16] To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.[17]

5 **Defense counsel's workload is controlled to permit the rendering of quality representation.** Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.[18] National caseload standards should in no event be exceeded,[19] but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.[20]

6 Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.[21]

7 The same attorney continuously represents the client until completion of the case. Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.[22] The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.[23] Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.[24] Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases,[25] and separately fund expert, investigative, and other litigation support services.[26] No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.[27] This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

9 Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.[28]

10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel,or contract defenders should be supervised and periodically evaluated for competence and efficiency.[29]

NOTEs

1 "Counsel" as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. "Defense" as used herein relates to both the juvenile and adult public defense systems.

2 National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter "NAC"], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 2.1(D).

3 NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2; Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/ American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter "ABA Monitoring"], Standard 3.2.

2 Judicial independence is "the most essential character of a free society" (American Bar Association Standing Committee on Judicial Independence, 1997).

5 ABA, *supra* note 2, Standard 5-4.1

6 "Sufficiently high" is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase generally can be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

7 NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2. "Defender office" means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

8 ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

9 NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

10 ABA, *supra* note 2, Standard 5-2.1 and commentary; Assigned Counsel, *supra* note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

11 NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

12 For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

13 NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(A).

14 NSC, *supra* note 2, Guideline 1.3.

15 American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter "ABA Defense Function"], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter "Performance Guidelines"], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.

16 NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

17 ABA Defense Function, *supra* note 15, Standard 4-3.1.

18 NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

19 Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). *See also* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter "Death Penalty"].

20 ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard 1-F.

21 Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

22 NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(B)(i).

23 NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). *See* NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). *Cf.* NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

24 ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

25 NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

26 ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

27 ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

28 NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(4), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 10(e); Contracting, *supra* note 2, Guideline III-17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(A).

29 NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Monitoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.

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Defending Liberty
Pursuing Justice

PUBLIC DEFENDERS: JUSTICE SYSTEMS' FIRST RESPONDERS FOR PEOPLE
OPEN LETTER TO AMERICA

May 7, 2020

The pandemic caused by COVID is having an impact on every part of our lives. Most Americans are staying at home and focusing on trying to stay safe. However, some have been called to a different life. These people we recognize as heroes: nurses, doctors, EMTs, police officers, social workers, grocery clerks, postal workers and others whose professions have required them to stay at work, despite the risk of personal harm.

There is a group of people who have been left out of this conversation who are deserving of our recognition. Tens of thousands of public defenders and other public defense professionals daily deliver the promise of rights enumerated in the Constitution, a function that has grown all the more critical in these dark times. As courts have closed their doors, access to justice for low-income people facing criminal charges has been severely curtailed. Jurisdictions across the country have limited the ability to challenge pre-trial detention, litigate evidentiary issues, or conduct trials. Rather than scale back our own efforts, public defenders have stepped up, put ourselves at risk in crowded courtrooms, unsafe jails, and public spaces to ensure that low-income people's rights are not cast aside and their legal needs ignored.

Immediately after the beginning of this pandemic, public defenders worked to identify the most vulnerable people in our jails and prisons, people who will die if they remain incarcerated. We filed emergency motions on our clients' behalf resulting in the release of and saving the lives of thousands of incarcerated people. This advocacy has also saved the lives of jail personnel and reduced the risk of mass spread among prisoners. Public defenders also fought to protect due process rights, ensuring that low-income people could still access the courts for essential matters, connected clients with resources, counseling, and online programming to help them meet their most pressing needs and stay in compliance with court mandates, and worked tirelessly to resolve cases when in their clients' interest thus helping more people secure their freedom and reducing the growing backlog of cases. Likewise, we continue to work with concerned family members to keep them apprised of their loved one's case or release status when the courts are slow or difficult to access. The duty of the public defenders to our clients does not stop for COVID or anything else.

There is now the specter of enormous budget cuts that threaten the right to counsel. Every jurisdiction in the country will be grappling with insufficient resources for critical social services. Already, in Louisiana, defenders are being furloughed because the public defense system has run out of money. In Virginia, 59 needed new positions have been taken away along with a freeze on discretionary spending. In

Georgia, the Governor has announced cuts of 14% for next year. In New Mexico, 15-20% budget reductions are being threatened. Ohio faces 20% reductions this year. In most states, the reality of significant budget reductions in state and local government funding draws closer every day.

Now is not the time to reduce funding for public defense. Public defenders are appointed to represent poor people. The relationship between poverty and contact with the criminal justice system is well-documented and well-accepted. At the same time that an economic depression will reduce government revenues, the resources needed for public defense will likely increase as millions of people become unemployed and are thrown into poverty. Public defenders already suffer under crushing and unethical workloads. We have no control over workload, or ability to resist new cases created by the policies of police and prosecution. People arrested by the police and charged by prosecutors have a constitutional right to counsel, which the state must provide if they cannot afford to procure it for themselves. As a result of the economic fallout of COVID, people who formerly would have been able to hire counsel will now seek the services of a public defender. Now is no time to reduce the resources needed to defend a burgeoning number of people needing counsel. Further, public defender offices typically lag far behind their criminal justice partners when it comes to technology (both software and qualified staff). Public defender offices will need support to adapt to changes in creating client relationships, performing investigations in the field, participating in proceedings, and maintaining staff contact during quarantine. These upgrades will cost money and without them public defender offices will not be able to ethically or effectively provide defense services.

Providing adequate funding for public defense is also a smart investment. Public defenders have been at the forefront of systemic reforms that use tax dollars wisely and implement data-driven policies. Public defenders have led the movement for bail reform, for less draconian sentences, and for a smaller parole and probation system. By securing the release of vulnerable people while at the same time advocating for these reforms, public defenders are saving governments millions of dollars in unnecessary jail, prison, and supervision costs.

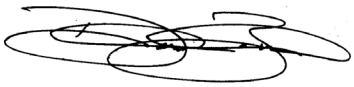
Instead of cutting funding to these essential workers, today presents an opportunity to do even more to address our bloated and ineffective system of mass-incarceration. We can radically limit arrests and prosecutions to actual public safety threats, drastically reduce the number of people held in pre-trial detention, and significantly reduce the use of probation and parole to supervise people who don't need supervision. Mass incarceration developed in part because of our nation's failure to fund adequately the public defense function. We will not be able to reduce mass incarceration and the significant harm being done to families and communities if resources are now taken away.

Most importantly, public defenders must be funded sufficiently to protect the constitutional rights of the accused. In a nation dedicated to the rule of law, our court system, including prosecutors and public defenders, are equally essential to protect our communities and deliver the promise of justice for all.

The National Association for Public Defense (NAPD), an association of over 22,000 public defenders and public defense professionals, calls upon the nation to recognize the immense contribution of public defenders, particularly during this time of crisis. Until there is a massive restructuring of the criminal justice system and a significant

reduction in national incarceration rates, NAPD demands that funding for public defense services remain at least at its present level, that anticipated increases in public defender workload be closely monitored, and that public defender offices have access to funds required to adapt to new justice system operation. NAPD believes that the imminent economic reality will require reducing our massive criminal justice system. We believe that can – and must – be done safely. We look forward to participating as a partner in the process to create new criminal justice policies that reflect commitments to fairness, justice, public safety and community health.

Sincerely,



Derwyn Bunton, Chair
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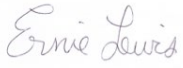

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NATIONAL ASSOCIATION FOR PUBLIC DEFENSE

NAPD STATEMENT ON
THE NECESSITY OF MEANINGFUL WORKLOAD STANDARDS FOR PUBLIC DEFENSE DELIVERY SYSTEMS

This statement was approved by the NAPD Steering Committee on March 19, 2015.

Excessive workloads in public defense delivery systems are an ethical issue.[1] Where they exist, public defense providers have a duty to remedy them; where they do not exist, public defense providers have a duty to avoid them. While this premise sounds simple, public defense providers, with rare exceptions, have been historically unsuccessful in maintaining reasonable workloads. Our most significant impediments to meeting this obligation have been our inability to: 1) define convincingly what constitutes an excessive public defense workload; and 2) demonstrate effectively how and when it exists. Without this information, public defense providers have been unable to persuade funders to provide necessary resources, or alternatively, to prove to judges their need for reduced caseloads. Generally speaking, the result has been a long-standing and widespread epidemic of excessive public defense workloads in jurisdictions across the United States.

With this historical perspective in mind, and in the interest of our clients, ourselves, and justice, NAPD believes the time has come for every public defense provider to develop, adopt, and institutionalize meaningful workload standards in its jurisdiction. In some systems, caseload standards (or a variation thereof) may already exist, courtesy of the National Advisory Commission (NAC) on Criminal Justice Standards, which published maximum annual caseloads for public defense providers in 1973. The American Council of Chief Defenders affirmed the continued viability of the NAC Standards in 2007 while recommending that jurisdictions develop local caseload standards that do not exceed NAC limits.[2] NAPD applauds every jurisdiction that at some point over the past 40 years has recognized the NAC standards as the best available measure of reasonable public defense workloads, and implemented them with rigor and commitment during that time. They are truly pioneers and visionaries in the effort to insure a meaningful Sixth Amendment right to counsel for everyone.

As good as the NAC standards have been, however, our country has seen significant changes in criminal defense practice since 1973, including: 1) scores of new criminal offenses that did not previously exist; 2) ever-increasing complexity in criminal practice, procedure and sentencing laws; 3) an explosion in the number of people charged each year with criminal offenses; and 4) a ballooning

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[1] *See* American Bar Association Formal Ethics Opinion 06-441 ("Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation").
[2] American Council of Chief Defenders on Caseloads and Workloads (August 2007)

system of "collateral consequences" of criminal convictions. Undoubtedly, these changes have drastically increased the amount of time it takes a lawyer to provide effective representation to a client.

For this reason alone, NAPD strongly believes that while the NAC standards remain useful, they must today be considered the "absolute maximums" of acceptable public defense workload standards. Additionally, NAPD believes that any jurisdiction currently using the NAC standards as its public defense workload standard should also have, or implement, an evidence-based method of assessing whether they remain a reliable measure. Finally, NAPD believes that a lawyer's well-spent time is the single most important factor in a client receiving effective and meaningful representation, and as such, NAPD believes meaningful evidence-based standards for public defense workloads can best be derived and institutionalized through ongoing, contemporaneous timekeeping by public defense providers.

Contemporaneous, conscientious, and ongoing timekeeping allows public defense providers to demonstrate concretely what they have (or have not) done for their clients. It also provides public defense providers with the data necessary to assess whether what they *are* doing for clients comports with what they *should be* doing for clients based on professional performance standards. Finally, and perhaps most significantly, it allows public defense providers, funders, judges, and anyone else interested to examine for themselves whether any deficiencies in performance are related to an excessive workload. In this regard, timekeeping provides a cogent, transparent, adaptable, long-term, and data-driven methodology to: 1) develop reasonable public defense workload standards; and 2) modify them when necessary to meet the changing demands of the public defense system. Stated another way, it allows us to "define convincingly what constitutes an excessive public defense workload and demonstrate effectively how and when it exists" – the very impediments that have historically prevented us from achieving reasonable workloads.

Evidence-based standards are the hallmark of 21st century policymakers. Recent history shows us that timekeeping, along with analysis of the data it produces, has led to workload controls, increased funding, and judicial relief from caseloads in jurisdictions where it has been used. While these are not guaranteed results of timekeeping, NAPD believes the practice professionalizes public defense systems, and produces clear and measurable benefits to individual lawyers and clients. Whether a lawyer has worked a sufficient amount of time to provide competent and effective representation to his or her clients is a relevant question to ask, and the answer is something clients are entitled to have. Producing data that helps us manage our workloads and better understand our practices makes us better lawyers. Public defense providers should be committed to professional practices that help the client.

For far too long, public defense providers have accepted crushing workloads that rob clients of their constitutional right to assistance of counsel, and erode the morale of lawyers who cannot possibly meet the demands placed on them. We can no longer operate in a system without meaningful workload standards, and with this statement, we encourage public defense providers in every jurisdiction to develop, adopt, and institutionalize meaningful, evidence-based workload standards in their jurisdictions.

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Office, District of New Jersey,
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MELANIE OBERLANDER
Administrative Supervisor, King County
Department of Public Defense,
Seattle, WA

NDUME OLATUSHANI
Children 's Defense Fund,
death row exoneree (wro ngfully
convicted to serve 28 years),
Nashville , TN

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Attorn ey-in -Charge, Juvenile Rights
Division , Legal Aid Society of New York,
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State Appellate Public Defender,
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PAUL DEWOLFE
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NATIONAL ASSOCIATION FOR PUBLIC DEFENSE

Carlos J. Martinez

Miami-Dade Public Defender, Miami-Dade County, Florida

Carlos J. Martinez, Miami-Dade County's elected Public Defender manages an office of 400 employees, handling approximately 70,000 cases each year. He was elected in 2008, and re-elected in 2012, 2016 and 2020 without opposition Mr. Martinez represented thousands of clients since 1990, before working as an administrator. Mr. Martinez represented clients in Miami's drug court, and later served on the committee of the National Association of Drug Court Professionals that wrote *Defining Drug Courts: The Key Components*.

He instituted the "Redemption Project" in 1998 to help former clients/returning citizens with sealing, expungement and rights restoration. He was instrumental in the design and implementation of the Streamlined Court Review process for Amendment 4 in Miami-Dade.
Mr. Martinez has served on technical assistance and training teams across the United States and Latin America, including the Inter-American Drug Abuse Control Commission (Dominican Republic, Chile and Mexico), the Honduran National Office of Public Defense, and the Public Defender Offices in Schenectady County (NY), San Bernardino County (CA), Maricopa County (Phoenix, AZ), and Marion County (Indianapolis, IN).

Mr. Martinez has been active member of numerous civic groups and local, state and national legal organizations. He is the Chairperson of the Indigent Advisory Group of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, Vice chair of the National Association for Public Defense Executive Committee, and was a member of the Institute for Innovation in Prosecution's Executive Session on Rethinking the Role of the Prosecutor in the Community. He served on the National Institute of Corrections' National Advisory Committee on Evidence Based Decision Making for Local Criminal Justice Systems, the Florida Blueprint Commission on Juvenile Justice, the Florida Department of Juvenile Justice's Zero Tolerance Task Force, chaired the Representation Subcommittee of The Florida Bar's Commission on the Legal Needs of Children, and later served as Chair of the Bar's Legal Needs of Children Committee.
He recently co-authored an article on *Prosecution and Public Defense: The Prosecutor's Role in Securing A Meaningful Right to an Attorney*. He also co-authored *The Best Defense Is No Offense: Preventing Crime Through Effective Public Defense*.

President's Commission on Law Enforcement and the Administration of Justice

Panel: The Role of Public Defenders

Written Testimony of Carlos J. Martinez, elected Public Defender

Miami-Dade County, Florida

Throughout the U.S., most individuals accused of a crime have a court-appointed attorney, a public defender. In many jurisdictions, a private lawyer is paid by the government to provide constitutionally mandated representation. In others, attorneys working in a public defender's office provide the legal representation. I will focus on how law enforcement can effectively engage the local public defender's office to improve a) the administration of justice, b) responses to the mentally ill, and c) data-informed decision-making.

I. Administration of Justice

Public defense – like the prosecution, courts and law enforcement – plays a vital role in ensuring the justice system is just and reliable. When public defenders lack the resources necessary to prepare a full and fair defense for each client, mistakes are made, the system's reliability is rightfully questioned, and everyone loses. The common system view is that when the justice system is working well with adequate resources, the constitutional guarantees are respected, the innocent are exonerated, the guilty are convicted, the punishment is commensurate with the harm done, victims get closure, and the community is safe. However, that involves a system lens which often overlooks the impacted individuals and communities.

The criminal justice system functions by default as if offenders and victims are distinct classes of people with conflicting interests, ignoring the reality that today's offender was yesterday's victim (and vice versa). Victims are often family and friends, who frequently identify more with offenders than with law enforcement. When punishment is meted out, the offender is not the only one punished, it is family and the community as well.

In Public Defender offices we get to know our clients, their backgrounds, and the impact on their families and communities, close up. Drug abuse, mental illness, physical abuse and childhood trauma are common characteristics. Because Public Defender offices represent large numbers of clients, our

perspective can add value not just to service providers but also to law enforcement.

Public defenders are often skeptical of working with law enforcement and vice versa. In Miami-Dade County, the Public Defender's office is at the table as an integral partner in community-wide efforts to address violence, substance abuse, mental health and homelessness. Those efforts are sometimes led by law enforcement. While, we zealously guard our constitutional obligations, we nevertheless, engage, voice our opinion and suggest alternatives that both enhance safety and protect individual rights. But, for that level of cooperation to work, law enforcement and public defender offices must respect their different roles.

Cooperation is not always easy. The Miami-Dade Juvenile Assessment Center (the JAC) was initially created under the auspices, and with funding from the Miami-Dade Police Department. The JAC took an innovative approach to juvenile arrests, creating a one stop intake center for police and for social services to interact with the arrested child and his family. The Public Defender was given an office at the JAC so we could promptly interact with the child immediately after arrest. The Public Defender collaboration worked until we could not be assured that the database with confidential social services information would be housed in police department servers and not with the social services department. Eventually, the Public Defender rejoined the collaboration when the JAC was became its own standalone department and was no longer part of the police department.

Several years ago, the Miami-Dade Police Director invited me to speak to the incoming police academy class regarding the consequences of an arrest or conviction. The Director felt it was important for officers to know the real-life impact of their actions when they exercised the discretion to arrest or not arrest. Officers also appreciated that they could directly question the Public Defender. Almost 15 years before, we presented the consequences to every public schools' police officer. That new awareness along with school policy changes led to a significant reduction of misdemeanor arrests the next school year, a welcome disruption of the school to prison pipeline. The openness to dialogue and change between the Public Defender and local police chiefs has certainly improved the administration of justice in Miami-Dade County.

Recommendation: Reach out to your local Chief Public Defender to explore ways to improve the administration of justice.

II. Responses to the Mentally Ill

One of the most significant challenges we face in the criminal justice system is the prevalence of mental illness. As the Attorney general noted in his statement

establishing the Presidential Commission "Our collective failures to care for those who suffer from drug addiction and mental illness have pushed these problems to the street for officers and deputies to manage.[1]" This challenge can seem intractable.

Individuals in crisis can be an imminent danger to themselves and to others. Desperate families reach out to law enforcement hoping for the immediate danger to pass and for their family member to get help. However, the response depends largely on local resources and options available to that front-line officer.

In many jurisdictions throughout the U.S., community partnerships among law enforcement, the courts, mental health and addiction professionals have helped form Crisis Intervention Teams (CIT) training in local police departments. The CIT training model was developed in Memphis, Tennessee in the late 1980's. It involves specialized training[2] to identify symptoms, de-escalate and divert individuals experiencing a mental health crisis to hospitals and more appropriate settings rather than to jails. From 2010 thru 2018, Miami and Miami-Dade Police Departments combined handled 91,472 CIT calls and only made 152 arrests. Countywide arrests dropped in Miami-Dade from 118,000 per year to 53,000.[3]

The Miami-Dade County jails are the largest psychiatric institution in Florida, and house approximately 1,200 individuals each day who have a serious mental illness[4]. Miami-Dade Courts established the Criminal Mental Health Project to divert defendants into community-based treatment and support services. The multi-disciplinary[5] approach involves CIT training, post-booking diversion, and eventually a one-stop facility. Over 7,500 police officers are CIT trained in all municipalities in Miami-Dade County. Mental health diversion helps mentally ill clients get the help they desperately need while not accumulating a conviction and increasing the likelihood that they will not recidivate.

Recommendation: If your Department does not have CIT training available in your jurisdiction, seek collaborations to establish it.

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[1] Statement from Attorney General Barr about the Establishment of the Presidential Commission, January 22, 2020, https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice

[2] Miami-Dade County CIT Training Curriculum

[3] Statistics provide by Judge Steve Leifman.

[4] https://www.jud11.flcourts.org/Criminal-Mental-Health-Project

[5] Assistant public defenders serve as CIT training faculty.

Recommendation: Work with the local prosecutor, Chief Public Defender and the courts to expand alternatives to criminal case prosecution for people with mental illness.

III. Data-Informed Decision-Making

Data-driven practices to combat crime and reduce crashes are nothing new to law enforcement[6]. The effectiveness of such policies and the use of new technologies continues to be analyzed and debated.

In his statement establishing the Commission, the Attorney General noted that "Nobody wins when law enforcement do not have the trust of the people they protect." We all know he is correct. My comments here are directed at improving the trust of the community through data transparency.

You cannot change what you do not know. In my first year as the elected Public Defender I had to confront the reality of a shrinking budget and an increasing number of clients to represent, nearly 113,000 new clients. I knew there was no way my attorneys could even speak to all the clients they were assigned to represent, much less diligently work on their cases. We challenged our untenable situation in court. Anecdotes alone would not suffice to show the extent of the damage done to individuals because my budget was woefully inadequate. We collected, analyzed and presented the data. It was even worse than we thought. One attorney had handled more than 900 felony cases in one year. The Florida Supreme Court even noted that they were "struck by the breadth and depth of the evidence of how the excessive caseload has impacted the Public Defender's representation of indigent defendants.[7]" While we eventually won the case, looking at our data forced us to change our practices (investigate cases earlier), and work with other stakeholders (e.g., the jail allowed us to install video equipment so we could interview our clients remotely). To re-establish community trust in the quality of our work, I had to be transparent about what we were doing to overcome budget shortfalls while improving legal representation. We continue tracking and analyzing our data, and making improvements along the way, informed by the data.

Law enforcement has a similar challenge in earning the trust of their communities. For example, in my experience speaking to hundreds of public and private high school students, students had experienced discourtesy, disrespect, and harassment by law enforcement, irrespective of income level. Because we only represent individuals who cannot afford to hire an attorney, I was surprised to learn that in Miami-Dade County, a majority minority

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[6] https://cops.usdoj.gov/RIC/Publications/cops-w0558-pub.pdf

[7] Public Defender v. State, https://efactssc-public.flcourts.org/casedocuments/2010-1349_disposition_121902.pdf

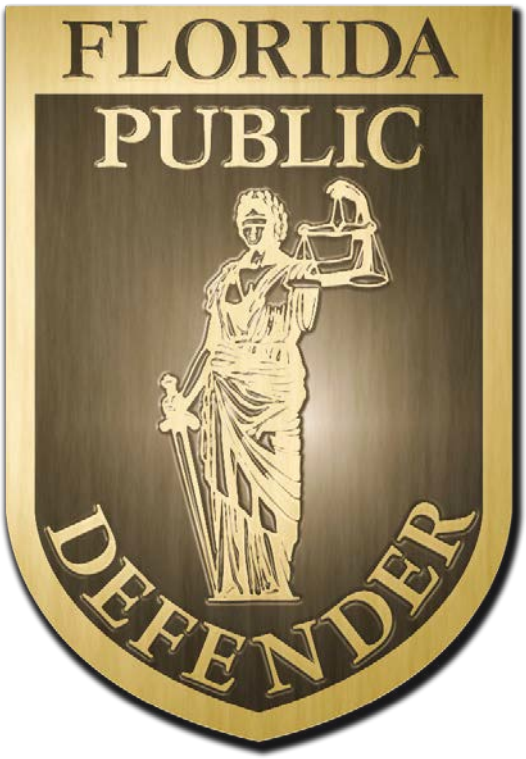
community with 2.7 million residents and a diverse police force, the distrust of law enforcement was so widespread across racial, ethnic and income lines.

After a news expose showing the disproportionate arrests of blacks vs. whites or Hispanics, for minor drug possession, Miami-Dade County adopted an ordinance giving officers the discretion to cite (civil citation) rather than arrest and prosecute an individual in possession of less than 20 grams of marijuana. In Florida, there are serious collateral consequences for even minor offenses[8]. Prior to 2015, more blacks than whites or Hispanics were arrested for minor possession. After the ordinance, marijuana arrests plummeted for every ethnic and racial group. Availability of both civil citation and arrest data has helped inform additional changes and improvements in policing and community perception of policing.

While Public Defenders cannot speak for affected communities themselves, they can provide valuable insight regarding actions that lead communities and those who serve those communities to distrust law enforcement. Data can help inform some solutions.

Recommendation: Work with your local Chief Public Defender, civil rights and civic organizations to identify disparities and other issues that negatively impact trust in law enforcement.

[8] See Attachment A, What You Don't Know Can Hurt You: The Collateral Consequences of a Conviction in Florida



What You Don't Know Can Hurt You: The Collateral Consequences of a Conviction in Florida

This Manual Developed By and For The Miami-Dade Public Defender's Office

Carlos J. Martinez, Public Defender
August 2015
Updated April 2019

Acknowledgments

This guide was prepared by the Office of the Public Defender for the Eleventh Judicial Circuit of Florida for its attorneys. Various collateral consequence manuals from other public interest organizations served as a model and inspiration. These organizations are the Bronx Defenders; the Public Defender Service for the District of Columbia; and the Kentucky Department of Public Advocacy. Their work in shining a spotlight on the collateral consequences of convictions is greatly appreciated.

A special thanks to (APD) Jonathan Greenberg for the extensive research and multiple drafts. Chief APD Marie Osborne helped edit this guide. Credit also goes to Assistant Public Defenders Tamara Gray, Kevin Hellmann, and Ruck Deminico who assisted Carlos J. Martinez in developing the initial two-page summary of the consequences 10 years ago. Evian White and Jeff Hearne, attorneys with Legal Services of Greater Miami, provided invaluable insight into public housing issues in Florida. Sydney Towne, a law student from the University of Miami affiliated with the HOPE Public Interest Resource Center, spent many hours editing and proofing this work. Heileen Camacho and Diane Yanez helped with the guide's formatting.

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The Collateral Consequences of a Conviction

Introduction

Over the last 30 years there have been two significant developments in American criminal law. The first development has been the expansion of the justice system. For decades there have been more arrests; more prosecutions; more plea bargains; and more convictions. Many people by now are familiar with the fact that we incarcerate a greater percentage of our population than any other country on Earth. But the consequences of this development impact a significantly larger number of people than just those who are incarcerated as a result of a conviction. In Florida, hundreds of thousands each year are not incarcerated yet face life-long consequences as a result of the arrest, even if there was no finding of guilt or conviction in a criminal case.

The second development is that the consequences of a conviction have dramatically increased, alongside the widespread availability of arrest records online. This does not just implicate the longer prison sentences that are commonplace today. It also implicates the collateral consequences of a conviction or a finding of guilt. Any criminal conviction, however small, triggers a convoluted network of federal, state and agency consequences that can affect nearly every aspect of a person's life, including eligibility for social services, professional licenses, housing, student loans, academic scholarships, parental rights, immigration status, and employment. Most of the consequences are "silently" and automatically imposed. Most last a lifetime and provide no method for relief. A person's subsequent behavior, community contributions and/or personal achievements cannot remove or alter these collateral consequences. Not only are there more convictions today, but there is also far more to lose because of them.

A collateral consequence is any adverse legal effect of a conviction that is not a part of a sentence. Fines and prison time, for example, are part of a sentence. The loss of food stamp benefits or public housing assistance, on the other hand, is a possible collateral consequence. It's a consequence that the judge does not pronounce at sentencing but nevertheless occurs due to the conviction.

These consequences may come as a shock to some defendants. Many defendants are not even told about them by either the judge or their attorney before they accept a plea offer. However, these consequences can sometimes be worse than the sentence itself, jeopardizing a person's ability to support his or her family or maintain a livelihood. Despite these high stakes, many defendants accept plea offers with significant consequences they are completely unaware of. This manual aims to educate assistant public defenders in Miami-Dade about these Florida consequences.

The Obligations of the Criminal Defense Attorney

Defense attorneys have an ethical and constitutional obligation to provide effective assistance of counsel to their clients. This goes beyond investigating a case, conveying a plea offer, and

preparing for trial. An attorney also has the constitutional obligation to advise a client about certain consequences of a conviction that go beyond the pronounced sentence.

The Supreme Court has emphasized that it has "never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance'" under the Sixth Amendment.[1] The defendant must be made aware of certain "severe" consequences that are collateral, yet nevertheless "certain" to result from the conviction.

In other words, advising the defendant about collateral consequences is not going above and beyond the call of duty. It is a part of the constitutional duty to provide competent advice to the client. As the American Bar Association has recognized, a zealous and effective defense attorney should make every effort to learn about these collateral consequences; advise his or client about them; and work to mitigate or avoid the consequences if at all possible.[2]

Limitations of this Publication

This manual is not legal advice and should not be construed as such or used as a substitute for legal counsel. It is only up-to-date as of the date of its publication. A person charged with a crime should consult an attorney to obtain the most current advice about these issues.

This overview of collateral consequences focuses on Florida law and certain aspects of federal law. It is not exhaustive. It does not include every conceivable consequence under Florida or federal law, nor does not address the consequences of a conviction in other states. Please see Appendix D for a list of collateral consequence guides prepared by organizations from other jurisdictions.

Everyone facing a criminal charge is in a different situation. The consequences they face depend on the nature of the charge and the person's unique background and circumstances. This manual is not intended to supplant the advice of counsel. Rather, it is meant to alert both attorneys and people facing criminal charges to the less obvious consequences of the case. Understanding which collateral consequences matter most in a case requires a conversation between the attorney and the client.

Key Questions to Ask

The following questions should be asked when counseling a person facing a possible conviction:

- Is the person a U.S. citizen?
- Does the person have a driver's license?
- Is he or she receiving state or federal benefits?
- Does he or she have a professional license; work in a field that requires a background check; or have a job that involves working inside schools or other people's homes?
- Does he or she work for the federal or state government?

- Does he or she work for a private employer that provides services onsite to public schools?
- Does he or she own firearms or have a job that requires the ability to lawfully possess a firearm?

The answers to these questions will not touch upon every possible consequence. However, they will often bring in to focus the most pressing collateral issues in a case. A non-citizen, a security guard, and an indigent single parent all face collateral consequences that are both life changing yet radically different from each other.

Preliminary Concept: Adjudication vs. Withhold of Adjudication

A withhold of adjudication of guilt is unique to Florida. When a defendant pleads guilty or is found guilty at trial, like in any other state the judge can adjudicate the defendant guilty. However, for certain offenses the judge may instead withhold an adjudication of guilt. A withhold of adjudication is often referred to simply as a "withhold."

A court can withhold adjudication upon finding that "the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law."[3] A person with a withhold can lawfully deny having been convicted of the crime; cannot be impeached with the crime when testifying in future court proceedings[4]; and, if adjudication is withheld in a felony case, will not lose the right to vote.[5] In other words, as a general matter a withhold is not a conviction for purposes of Florida law.

In certain situations, however, a withhold *will* be treated like a conviction. For example, sexual offender registration is required in cases even where adjudication was withheld. This manual will note situations where a collateral consequence will be imposed even if adjudication has been withheld.

A court cannot withhold adjudication of guilt in the following situations:

- Any capital, life, or first degree felony offense.
- Any second degree felony offense, unless the prosecutor requests that adjudication be withheld; or if the court makes written findings that a withhold is reasonably justified. However, adjudication cannot be withheld for a second degree felony if the defendant has a withhold for a prior felony.
- A third degree felony when the defendant has a withhold for a prior felony, unless the prosecutor requests that adjudication be withheld or the court makes findings that a withhold is reasonably justified. A defendant cannot receive a withhold for a third degree felony if he or she has two or more prior felony withholds.[6]
- Any conviction for DUI, manslaughter resulting from the operation of a vehicle, or vehicular homicide.[7]

The Impossibility of Expunging a Withhold

In Florida it is possible to get certain aspects of a person's criminal history expunged or sealed. See the section on Relief below for more details. While it is possible to seal a criminal case that resulted in a withhold,[8] it is currently impossible to expunge a withhold from one's record.[9]

The Treatment of Withholds in Other Jurisdictions

Courts outside of Florida typically treat a withhold like a conviction.[10] This includes the federal government.[11] Some out of state courts, however, will sometimes apply Florida law in deciding whether to treat a withhold like a conviction.[12]

Practice Tip: A defendant who is offered a withhold to a felony should understand that while this will spare him or her from certain collateral consequences in Florida, collateral consequences in other states and in the federal system (including immigration consequences) can still be an issue.

Relief

This manual places at the beginning, rather than at the end, a discussion of the ways a person can obtain relief from the collateral consequences of a conviction. This is a deliberate choice to underscore an important point: it is very difficult for a person in Florida to restore his or her civil rights following a felony conviction. This should be kept in mind as one surveys the numerous collateral consequences that can result from a conviction.

Sealing or Expunging Criminal Records

A court may expunge or seal a person's criminal record under a limited set of circumstances.

A person is not eligible for record expunction or sealing if he or she has ever been adjudicated guilty of any offense, including misdemeanors, traffic crimes, and criminal ordinance violations.[13] This restriction is not limited to Florida convictions. A person is also prohibited from seeking this relief if he or she has previously had a case sealed or expunged before. **In general, a person can only expunge or seal a single case**.

A criminal history involving any of the following offenses cannot be sealed or expunged if the offense results in a conviction or withhold of adjudication:

- Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult;
- Aggravated assault;
- Aggravated battery;
- Aircraft piracy;
- Arson;
- Burglary of a dwelling;
- Carjacking;
- Child abuse or aggravated child abuse;
- Computer pornography;
- Domestic violence, any crime;
- Fraud: any scheme to defraud or organized fraud;
- Home-invasion robbery;
- Homicide;
- Illegal use of explosives;
- Kidnapping;
- Lewd or lascivious offense upon or in presence of elderly person or disabled adult;
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Luring or enticing a child;
- Manslaughter;
- Manufacturing or trafficking in a controlled substance;
- Obscene literature, providing to a minor;
- Prostitution: procuring person under 18 for prostitution;
- Public officers and employees: Certain offenses;
- Robbery;
- Selling or buying of minors;
- Sexual activity with a child, who is 12 years of age or older but less than 18 years of age;
- Sexual battery and related offenses;
- Sexual misconduct with a developmentally disabled or mentally ill person and related offenses;
- Sexual misconduct with a mentally ill or deficient defendant and related offenses;
- Sexual performance by a child;
- Sexual predator or offender: Any offense qualifying for registration as such;
- Stalking or aggravated stalking;
- Terrorism; or
- Voyeurism.[14]

<u>The Difference Between Expungement vs. Sealing</u>

When a case is expunged, the records pertaining to the expunged case are destroyed. Even entities with access to sealed records cannot see expunged records. When a case is sealed, the records cannot be accessed by the general public.

If the prosecutor does not file a charging document after an arrest, or if the prosecutor or judge later dismisses the case, a person is eligible to have his or record expunged. As of 2018, if the case proceeded to trial and the judge or jury rendered a judgment of acquittal or a verdict of not guilty, a person is eligible for expunction.[15] If the case proceeded to trial or the person accepted a plea deal, and adjudication was withheld, the person is only eligible to have his or her record sealed. Furthermore, a person cannot seal a record following a withhold until the person is no longer under court supervision for the offense (i.e., until probation is over).

Practice Tip: Expungement is preferable to sealing, but only arrests can be expunged; and only one can be sealed *or* expunged in a lifetime (except for certain juvenile offenses). A person with a withhold to a more serious offense may prefer to seal that case rather than expunge a more trivial arrest.

Regardless of whether a person seeks to expunge or seal a case, it is always a good idea to obtain a certified copy of the case and charge disposition(s) and the arrest affidavit, in the event the individual needs that information to explain an arrest in the future.

Effect of Record Expungement or Sealing

A criminal record that is expunged will be physically destroyed, except to the extent that the Florida Department of Law Enforcement retains a confidential copy that is not subject to a public records disclosure request.[16]

A criminal record that is sealed is confidential and likewise exempt from public records requests. The record is only available to the person and to criminal justice agencies for the purposes of activities such as background checks (including backgrounds checks related to a firearm purchase).[17]

A person whose record has been expunged or sealed can lawfully deny the existence of the criminal case unless the person:

- Is applying for a job with a criminal justice agency;
- Is a defendant in a criminal case;
- Is applying for admission to the Florida Bar;
- Is seeking to be employed or licensed by certain state government departments (most pertaining to education, children, or healthcare);
- Is seeking to be employed by a state contractor in a sensitive position having direct contact with children, the disabled, or the elderly; or

- Is seeking to become a court-appointed guardian.[18]

The Procedure for Expungement or Sealing

Expunging or sealing a record involves a number of steps. First, the person must secure a certificate of eligibility for expunction or sealing from the Florida Department of Law Enforcement ("FDLE"). To obtain such a certificate, the FDLE must be provided with the following:

- A $75 processing fee made out to the FDLE;
- A set of the person's fingerprints;
- If the applicant is seeking record expungement, a certified statement from the prosecutor stating that charges were either not filed or dismissed, or resulted in a judgment or verdict of acquittal, and that the arrest was not for one of the serious offenses listed above that cannot be sealed; or
- If the applicant is seeking record sealing, a certified copy of the disposition of the charge to be sealed (i.e., proof that adjudication was withheld).

An application form, detailed processing instructions, and a checklist for expungement or sealing can be found at: http://www.fdle.state.fl.us/expunge/.

If the person provides the above to the FDLE, has no prior convictions, and has never previously had a case expunged or sealed, the department must issue the certificate of eligibility. Once the FDLE issues a stamped certificate of eligibility it is valid for one year.

Once the person has obtained the certificate, he or she must file a petition to expunge or seal the criminal record before the court. A completed petition requires the following items:

- A valid certificate of eligibility from the FDLE; and
- A sworn statement from the petitioner attesting that he or she:
    - Has never previously been convicted of any offense;
    - Has not been adjudicated guilty or found delinquent of committing any of the acts stemming from the case the person seeks to expunge or seal;
    - Has never previously had a case expunged or sealed; and
    - Is eligible for expungement or sealing to the best of his or her knowledge.

Practice Tip: Because arrest records are public in Florida, there are certain private companies that regularly obtain such records from Florida law enforcement agencies to sell to third parties. Florida law does not require these companies to delete records that have been sealed or expunged.

Attorneys have had success in getting these companies to remove from sale criminal histories that were subsequently sealed or expunged by the court. A person who successfully seals or expunges

a case should consider looking at these companies' websites to make sure they are not selling his or her sealed or expunged records.

Expunging or Sealing with a Prior Juvenile Delinquency

Ordinarily, a person cannot expunge or seal a criminal history if he or she has a prior adjudication of guilt. However, a person who was previously adjudicated delinquent as a juvenile can still apply for expungement or sealing provided he or she was not found delinquent of a felony or certain serious misdemeanors including animal cruelty, assault, battery, or petit theft.[19]

The Self-Defense Exception for Subsequent Expungement

Ordinarily, a person can only have one case expunged. However, a person may seek to have a subsequent case expunged if he or she can provide to the FDLE a certified statement from the prosecutor indicating that criminal charges were not filed or were later dismissed due to a finding that the person acted in self-defense.[20]

Online Booking Photos

In recent years, there has been a proliferation of companies that post a person's booking photo online following an arrest and charge a fee to have the picture removed. Expunging or sealing a criminal record will not result in the removal of a person's photo from these websites. However, in 2017 the Florida Legislature passed a law prohibiting these companies from charging a fee to have booking photos taken down, and further requiring companies to take a booking photo down upon request.[21]

Administrative Sealing Following Dismissal or Acquittal

In 2017, the Florida Legislature passed a new law expanding the situations in which an arrest can be sealed. When a person is arrested for any felony or misdemeanor and the prosecution declines to press charges, the trial court dismisses the charges or enters a judgment of acquittal, or a jury returns a verdict of not guilty at trial, that arrest will be automatically sealed.[22]

The Governor's Clemency Powers

A person convicted of a felony will lose his or her civil rights. See the section on Civil and Civic Rights for more details. This bars the person from holding public office, serving on juries, and exercising the right to vote. Unfortunately, obtaining executive clemency in Florida is a difficult

process. Lost civil rights can only be regained by an executive pardon or upon the restoration of civil rights, both of which can only be done by the Executive Clemency Board.[23]

Pardon and civil restoration recommendations are made by the Clemency Board, which is administered by the Office of Executive Clemency. The Clemency Board consists of the Governor and three members of the Florida Cabinet. The Rules of Executive Clemency can be found at https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf. The Clemency Board can deny a request for pardon or civil restoration for any reason.[24]

Executive Pardons

A full pardon forgives guilt for any Florida convictions. It is as if the conviction never happened. It restores all prior civil rights, including the right to possess firearms.[25] Provided the person has no convictions from other states or the federal system, a pardon restores a person's right to vote, serve on juries, and hold public office. Similarly, a person convicted of a sexual offense is relieved of the obligation to register as a sex offender if pardoned.[26]

To be eligible for a pardon, a person must have completed the entire sentence for his or her most recent felony conviction. Furthermore, the person must have completed all conditions of supervision (such as parole or probation), and 10 years must have passed since the completion of these conditions. The applicant cannot have fines related to the convictions totaling more than $1,000 and cannot owe outstanding restitution.

The Clemency Board also has the power to issue a "Pardon Without Firearm Authority."[27] Like a full pardon, this releases a person from punishment, forgives guilt, and restores all of the applicant's civil rights, except for the right to own, possess, or use a firearm.

A person who has been pardoned does *not* have his or her criminal record automatically expunged or sealed. There is no type of clemency that will expunge or remove a pardoned offense from a criminal record.

Restoration of Civil Rights

A person may apply to the Clemency Board to seek a Restoration of Civil Rights.[28] This restores all of the applicant's civil rights (such as the right to vote or serve on jury), except for the right to possess or use firearms. It also does not relieve a person's obligation to register as a sex offender if otherwise required.

If an applicant wishes to regain firearm rights, he or she must specifically seek the Specific Authority to Own, Possess, or Use Firearms from the Clemency Board.[29] In light of federal laws

on firearm possession (see the section on Firearms for more details), the Clemency Board will not give this relief to any person with felony convictions from federal court or any out-of-state court.

If the applicant has finished serving his or her sentence, including probation, owes no restitution to any victim, has not been convicted of certain enumerated serious offenses, and five years have passed since the completion of the sentence without any new arrests, a person can apply for the restoration of his or her civil rights (except for the right to possess firearms) without a hearing.[30] If a person was convicted of one the more serious offenses, the person must wait for seven years before applying for civil restoration and a hearing before the Clemency Board will be required.[31]

Process

To apply for a pardon or restoration of civil rights, an application should be sent to the Office of Executive Clemency, 4070 Esplanade Way, Tallahassee, Florida, 32399-2450. Application forms can be found at www.fcor.state.fl.us.

An application requires certified copies of the following documents for each conviction:

- The charging document (usually the information);
- The judgment; and
- The sentence.

An application may also include character references, letters of support, and any other material relevant to the clemency decision.[32] Although not required, it is a good idea to include this supporting documentation in order to present the best case possible to the Clemency Board.

For people seeking restoration of civil rights following a more serious conviction, a hearing before the Clemency Board will be held.[33] Applicants are not required to attend but attendance is strongly encouraged.[34] The Board will give an applicant a total of 10 minutes to testify and present the testimony of supporting witnesses in favor of clemency.[35] An applicant who has been denied clemency must wait two years before reapplying to the Clemency Board.[36] There does not appear to be a limit to how many times an applicant can apply for clemency, provided the person respects the two year waiting period once an application for clemency has been denied.

Legal Challenges to Florida's Process for Restoring Voter Rights

In February of 2018, a federal district court judge ruled that Florida's process for restoring voting rights to people with felony convictions was unconstitutional, given that the State's clemency board had "unfettered discretion" to choose who can have their rights restored and when.[37] The district court ruled that the right to vote was too fundamental to allow for such an arbitrary restoration procedure. The district court ordered the Governor to create a new plan for restoring

voter rights that passed constitutional muster. The Governor expressed an intent to appeal this ruling, and as of the 2018 update to this manual litigation on this issue continues.

Benefits – Federal

Social Security

Old Age, Survivor's Insurance, and Disability Insurance Benefits: A person is not eligible to receive monthly Social Security payments related to old age, survivor's, or disability insurance benefits if he or she:

- Is confined in any jail, prison, or other correctional institution following a conviction for a crime;
- Is confined at an institution following a finding that the person is guilty of a crime, but insane, not guilty of a crime by reason of insanity, or incompetent to stand trial;
- Is confined under a civil commitment statute as a sexual predator;
- Is a fugitive felon who is evading felony prosecution; or
- Is in violation of state or federal parole or probation.[38]

Disability Benefits: A person is ineligible to receive Supplemental Security Income payments if he or she:

- Is a fugitive evading felony prosecution;
- Is in custody following a felony conviction; or
- Has violated a condition of state or federal parole or probation.[39]

However, a person can restore his or her eligibility upon a showing that a court has issued an "exonerating order" for the offense in question.[40] Eligibility can also be restored upon a showing that the offense was non-violent and not drug-related.[41]

In determining a person's disabilities for purposes of federal benefits, the Social Security Administration will not consider any physical or mental impairment, or the aggravation of an impairment, if it arose in the course of a felony and the person was convicted of this felony.[42] For example, a person who trips and injures his or her foot while committing a robbery cannot receive disability payments for this impairment.

Representative Payees: A person who has been convicted of a felony cannot be a beneficiary's representative payee for Social Security payments, unless there is a determination made by the Commissioner of Social Security that this would be appropriate notwithstanding the conviction.[43]

SNAP and TANF Benefits

The Supplemental Nutrition Assistance Program ("SNAP"), formally known as the food stamp program, is designed to provide food assistance to lower income families. The federal government also offers Temporary Assistance to Needy Families ("TANF") grants to state agencies to provide financial assistance to lower income families with dependent children. This is generallyknown as welfare.

Similar to Social Security benefits, SNAP and TANF benefits are not available to any person who is a fugitive felon or in violation of parole or probation.[44] Certain felony convictions also make a person ineligible for SNAP benefits. These offenses include murder, aggravated sexual abuse, or any state or federal offense involving a sexual assault.[45]

SNAP, TANF, and Drug Convictions in Florida

In 1996, the SNAP and TANF programs were substantially modified by Congress. Among other changes, Congress made any person convicted of a felony drug offense (including possession or use) ineligible for SNAP and TANF benefits.[46] However, because SNAP and TANF benefits are distributed by state programs that are funded through federal grants, Congress allowed for each state to choose whether or not to opt out of the ban on those benefits for people with felony drug convictions.[47]

In Florida, SNAP and TANF benefits are distributed by the Department of Children and Families ("DCF"). Florida has opted out of the complete drug conviction benefits ban and instead implemented a modified ban for cash and food assistance benefits.[48] A person is only ineligible for cash and food assistance benefits in Florida if he or she has been convicted of drug trafficking.

Practice Tip: While a felony conviction for possession, sale, or distribution of a controlled substance will not result in a loss of SNAP or TANF benefits in Florida, as of 2013 13 states have chosen not to opt out of the ban on benefits for people convicted of drug-related felonies.[49] A person facing a felony drug conviction in Florida who resides in another state should look into his or her home state's opt-out provision and be aware of the potential consequences back home.

Medicaid

Federal law makes it illegal to knowingly make false or misleading statements in applying for benefits under any federal health care program.[50] A person convicted of violating this federal law may be suspended under Florida law from receiving Medicaid benefits for a period of up to one year.[51]

Veteran Benefits

A person who is incarcerated in any federal or state correctional facility as a result of a conviction for any felony or misdemeanor is not entitled to his or her military pension for the duration of their

imprisonment.[52] This deprivation of veteran pension payments begins on the 61st day of incarceration and ends when the imprisonment ends. However, a veteran's pension payments can be paid to the veteran's spouse or children during his or her imprisonment.[53]

A person convicted of certain extremely serious crimes against the United States (such as treason) will lose his or her veteran benefits.[54]

Loss of Other Federal (Commercial) Benefits Due to Certain Drug Convictions

Certain drug convictions will result in the loss of specific federal benefits. These benefits do not refer to social welfare benefits like retirement, welfare, Social Security, health, disability, veteran benefits, or public housing.[55] Rather, they are commercial in nature, such as any grant, contract, loan, professional license, or commercial license provided by a federal agency.

Any person convicted of drug trafficking in state or federal court will lose all federal commercial benefits:

- For up to five years after a first conviction at the court's discretion;
- For up to 10 years after a second conviction at the court's discretion;
- Permanently after three of more convictions.[56]

The consequences are less severe for a person convicted of possession of a controlled substance.

- Upon a first conviction, a person can lose, at the discretion of the court, all federal benefits for up to one year; can be required to complete a drug treatment program; can be required to perform community service; or some combination of all three.
- For two or more convictions, a person can lose all federal benefits for up to five years at the discretion of the court.[57]

The period of ineligibility for either drug traffickers or possessors will be suspended if the person:

- Completes a supervised drug rehabilitation program;
- Has otherwise been rehabilitated; or
- Has made a good faith effort to gain admission to a supervised drug rehabilitation program, but is unable to do so because of inaccessibility or unavailability of such a program, or the inability of the individual to pay for such a program.[58]

Bankruptcy (Chapter Eleven)

If a person files for bankruptcy under federal law and owes outstanding criminal fines or restitution to a victim arising from a criminal case, those debts will not be discharged if the bankruptcy is granted. This includes any award a victim may have received in a civil case against the person relating to willful or malicious injury or death.

Additionally, when a person files for bankruptcy and has previously been convicted of a violent or drug trafficking crime, his or her victim may file a petition asking the court to deny the bankruptcy filing. The court may grant that request upon a determination that it is in the victim's best interest.[59]

Benefits – State

Unemployment Benefits

Under the Reemployment Assistance Program Law, certain qualified people in Florida who are unemployed through no fault of their own are eligible to receive temporary wage replacement benefits.[60]

The following circumstances disqualify a person from receiving these benefits:

- A person cannot receive unemployment benefits for any week in which he or she is unavailable for work due to incarceration or imprisonment.[61]
- If a person was terminated for violating any criminal law in connection with his or her work, and was convicted, or entered a plea of guilty or no contest, the person is not entitled to reemployment assistance benefits for up to one year and until he or she has earned income of at least 17 times his or her weekly benefit amount.[62]
- A person who has been convicted of knowingly making a false statement to obtain or increase reemployment assistance benefits is ineligible to receive benefits for up to one year. A person cannot receive any further benefits until any overpayment of benefits had been repaid in full.[63]

A person is also disqualified for receiving any benefits if the employee was terminated because he or she failed to maintain a license, registration, or certification required by law for the employee to do his or her job.[64]

Practice tip: Numerous professional licenses can be lost following a conviction. See the section Employment and Appendix A on professional licenses for more details. A licensed professional facing a conviction should be aware that he or she may not be entitled to reemployment assistance benefits if the loss of the license results in a loss of employment.

Workers' Compensation

Certain employees injured on the job are entitled to workers' compensation. A person may not receive workers' compensation benefits if a court finds that he or she knowingly made a false or fraudulent statement for the purposes of obtaining benefits or otherwise intentionally engaged in any criminal act for the purpose of securing workers' compensation benefits.[65]

State Pension

Any public employee convicted of embezzling public funds, theft from his or her employer, any Chapter 838 felony (bribery and misuse of public office), any impeachable offense, certain sexual offenses against minors, or any felony with the intent to defraud the public of his or her services, forfeits all benefits under the public retirement system if the offense was committed prior to retirement.[66]

Court Costs and Fines

A person convicted of an offense, regardless of adjudication, will have to pay various court costs. The amount of these court costs varies and depends on the offense the person was convicted of. A person may also have to pay criminal fines as a part of his or her sentence. For certain offenses, there are minimum mandatory fines.

The clerk of court has the power to pursue the collection of these courts costs. If courts costs, fees, or fines have gone unpaid for 90 days, the clerk's office can refer the unpaid account to a collection agency.[67] This can result in a person's credit score being negatively affected. Additionally, it can result in a driver's license suspension. See the "Driving Privileges" section below for more details.

Driving Privileges

Certain convictions can result in the suspension or revocation of a person's driver's license. They are listed in greater detail below and include: Driving Under the Influence; Ignition Interlock Violation; habitual traffic offenses; traffic offenses resulting in injury or death; drug offenses, drag racing; and various miscellaneous offenses.

Practice tip: In Miami-Dade County, this is a particularly serious collateral consequence. Getting around Miami using only public transportation can be a serious burden, especially during the hot summer months. Although this can lead to the temptation to drive on a suspended license, that in itself can lead to additional criminal charges. It is therefore crucial to know which convictions will result in license suspension, how long these suspensions last for, and what measures a person can take to mitigate the burden of a suspended license.

Driving Under the Influence (DUI)

- First Conviction: A person's first DUI conviction will result in a license suspension of at least six months and at most one year. If the judge fails to specify the suspension length on the record, the suspension will be for the full year.[68]

- Second or Third Convictions: A person's second DUI conviction will result in a suspension of at least five years if that conviction is within five years of his or her first DUI conviction.[69] A person's third DUI will result in a suspension of at least 10 years if that conviction is within 10 years of two prior DUI convictions.[70] If the judge fails to specify the suspension length on the record, it will be for the minimum period allowed (i.e., either five or 10 years).[71]

- Fourth Conviction: A person with four or more DUI convictions will have his or her license permanently revoked. Any alcohol-related or drug-related conviction from another state will count for the purpose of determining a person's prior convictions.[72]

- DUI Manslaughter: A person convicted of DUI manslaughter will have his or her driving privilege permanently revoked.[73]

A person convicted of DUI must take a driver improvement course in order to maintain his or her license.[74] His or her license will be canceled until the completion of this course.

DUI Diversion Programs

Unlike some offenses, a judge may not withhold adjudication in a DUI case. If a person takes a plea to DUI or is convicted at trial, the court *must* adjudicate him or her guilty.[75] Coupled with the escalating sanctions that come with repeat DUI convictions, this can make even a first DUI charge a very serious matter.

Some Florida counties offer diversion programs for first time DUI offenders. In Miami-Dade County the DUI diversion program is called "Back on Track." Successful completion of the program will result in the defendant pleading guilty to reckless driving rather than DUI. A person with a prior DUI conviction is not eligible for the Back on Track program. More information about the program can be found at http://advocateprogram.com/dui-education/.

Ignition Interlock Violation

A DUI conviction may, and for subsequent offenses must, result in the installation of an ignition interlock device on a person's vehicle. It is against the law to tamper with or circumvent the operation of these devices; to request that another person blow into such a device; to blow into such a device on behalf of a person with a suspended driving privilege; or to lend a vehicle to a person who is required to have this device on his or car own car.[76]

A person who attempts to circumvent an ignition lock in the above ways will have his or her license suspended for one year. "Upon conviction of a separate violation of this section during the same period of required use of an ignition interlock device," a person will have his or her license suspended for five years.[77]

Habitual Traffic Offender

A person designated as a Habitual Traffic Offender ("HTO") will have his or her license revoked for a minimum period of five years.[78] To qualify as an HTO, a person must have accumulated within the past five years, arising out of separate acts, three or more convictions for the following offenses:

- Manslaughter resulting from the operation of a motor vehicle;
- Driving under the influence;
- Any felony in the commission of which a motor vehicle is used;
- Driving a motor vehicle with a suspended or revoked license ("DWLS");
- Failing to stop and render aid as required under Florida law in the event of a motor vehicle crash resulting in the death or personal injury of another; or
- Driving a commercial motor vehicle while his or her privilege is disqualified.[79]

A person will also be designated as an HTO if he or she accumulated within the past five years 15 convictions for moving traffic offenses for which points may be assessed.[80]

The violation of a federal law or the law of another state that is similar to the above laws (i.e., manslaughter, DUI, DWLS) will be counted in determining whether a person qualifies as an HTO.

Traffic Offenses Resulting in Injury or Death

A person convicted of murder resulting from the operation of a vehicle will have his or her driver's license permanently revoked.[81]

A conviction for the following offenses will result in a license suspension of at least three years:

- Manslaughter resulting from the operation of a vehicle;
- DUI with serious bodily injury to another;
- Vehicular homicide; or
- Leaving the scene of an accident that caused injury, serious bodily injury, or death.[82]

A person who violates any traffic law that resulted in a crash that caused the death or personal injury of another or property damage exceeding $500 can have his or her license suspended[83] for up to one year.[84]

A person who is convicted of a traffic offense which resulted in death or great bodily harm, or convicted of two crashes within a two year period resulting in property damage greater than $500 cannot have his or her license restored without taking a driver improvement class.[85]

Drug Offenses

Any person over the age of 18 convicted of possessing, selling, or trafficking a controlled substance, or convicted of conspiring to commit these offenses, will have his or her driver's license suspended for one year.[86] However, the judge may direct the Department of Motor Vehicles ("DMV") to issue a driver's license restricted to business or employment purposes.[87] A person who loses his or her license in this manner may petition for restoration after six months have passed.[88]

License suspension under this provision can only be applied to a conviction for an offense specifically listed in the statute (possession, sale, trafficking, conspiracy). Other offenses which are not specifically listed but are drug-related (such as the manufacture[89] or purchase of drugs[90]) will not trigger this suspension.

Federal law requires that a state suspend or revoke the driver's license of a person convicted of any drug offense, or risk losing federal highway funds.[91] However, each state has the right to opt out of this suspension requirement if that state's governor and legislature notify the federal government of their opposition to this policy.[92] As of the publication date of this manual, Florida has declined to opt out of this drug suspension requirement.

Practice tips:

- Even a conviction to a charge as petty as misdemeanor possession of marijuana will trigger this suspension. Although the judge has no discretion to waive the automatic suspension if the defendant has been convicted of an enumerated drug offense, the court may have discretion, depending on the case, to withhold adjudication. A withhold if possible is significantly preferable to an adjudication, given that it does not trigger the automatic license suspension.

- It is important to remember that only the enumerated crimes trigger the automatic suspension. The driving privilege should not be suspended merely because the conviction is drug-related.

Additionally, a person convicted of a felony for the possession of a controlled substance will have his or her driving privilege revoked if, at the time of the possession, the person was in control of a motor vehicle.[93] In a person has his or her driving privilege revoked under this rule, he or she will not be eligible to receive a hardship license during the revocation period.[94]

Drag Racing

A person who is adjudicated guilty of or receives a withhold for drag racing will have his or her license suspended.[95] The length of the suspension depends on whether the person has any prior convictions for drag racing.

- For a first drag racing conviction, the suspension is for one year.
- For a second drag racing conviction within five years, the suspension is for two years.

- For three or more drag racing convictions within five years, the suspension is for four years.

Miscellaneous Offenses

Discretionary: A person convicted of violating *any* Florida law regulating the operation of vehicles can have his or her license suspended if the court determines that the seriousness of the offense and circumstances surrounding the conviction warrant the suspension.[96]

A person convicted of obtaining his or her vehicle registration through fraudulent means can have his or her license plate canceled, and can be forced to return the plate to the department.[97]

Mandatory: A person convicted of any of the following offenses **will** have his or her license suspended for up to one year:

- Any felony in the commission of which a vehicle was used;[98]
- Making a false statement under oath to the DMV;[99]
- Three convictions for reckless driving in a one year period;[100]
- Any law against lewdness or prostitution where the violation was accomplished with the use of a vehicle;[101]
- Motor vehicle insurance fraud or patient brokering.[102]

A person convicted of failing to stop for a school bus twice within the preceding five years will have his or her license suspended for at least 90 days, but not more than six months.[103]

A person who is convicted or receives a withhold for soliciting prostitution in a case involving the use of a vehicle, and who has a prior soliciting conviction, will have his or her license suspended for at least one year.[104]

A person convicted of stealing a vehicle or the parts of a vehicle will have his or her driver's license automatically revoked. The DMV will not consider any application for reinstatement until the person has finished serving his or her sentence, including probation or parole.[105]

License Suspension for Non-Criminal Activity

Beyond criminal offenses, driving privileges can be suspended for the following reasons:

- Failure to pay financial obligations relating to a criminal offense or a non-criminal traffic ticket. If these court costs are not paid, a person's license will be suspended until the fees are paid in full or a payment plan has been established.[106]
- Failure to pay child support.[107] Federal law requires each state to establish a procedure for suspending the driver's license for any person overdue in his or her child support obligations.[108]
- Failure to comply with a subpoena or support order relating to paternity.[109]

- If an individual receives the following number of points on his or her driver's license within the set time frames it will be suspended for the corresponding time periods.
    - 12 points within 12 months is a 30 day suspension.
    - 18 points within 18 months is a 90 day suspension.
    - 24 points within 36 months is a one-year suspension.

Non-residents Convicted of Traffic Offenses in Florida

A non-resident driver who is convicted in Florida of any motor-vehicle offense may have a certified copy of the convicted forwarded to the DMV of the state where the person is a resident.[110] A non-resident driver facing of conviction in Florida should be aware that it could impact the validity of his or her license back home.

Florida Residents Convicted of Traffic Offenses in Other States

A Florida resident's license can be suspended if the department receives notice of an out of state conviction that, had it been committed here, would be grounds for suspension or revocation.[111] A Florida resident facing a traffic offense in another state should be aware of that state's reporting laws.

Relief from a Suspended License: Hardship Licenses

A person whose license has been suspended or revoked may request a hearing from the DMV to request what is commonly referred to as a hardship license. A hardship license is not available if the cause of the suspension was due to a drug offense. There are two types of hardship licenses:

- A "business purpose" hardship license, which grants a limited privilege allowing for any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for religious/church or medical purposes.
- An "employment purposes" hardship license, which grants a limited privilege for driving to and from work and on-the-job driving.[112]

A person whose license has been revoked as a Habitual Traffic Offender cannot seek a hardship license until one year of the revocation has elapsed.[113]

At a hardship hearing, a person can show that the license suspension prevents carrying out his or her job and that the use of a license for business purposes is necessary to support his or her family. For a DUI suspension, the DMV will require proof of the completion of a driver's improvement class or DUI class before granting a hardship license. It will always consider letters of recommendation from community members, law enforcement officers, or judicial officers.[114]

If a hardship license is issued and a person drives without a valid business reason, he or she can face criminal prosecution and revocation of the hardship license.

A person with multiple prior DUI suspensions, a DUI manslaughter suspension, or a permanent license revocation due to priors DUIs can apply for a hardship license in limited circumstances. The person will have to wait a certain amount of time before applying for the license, the length of which depends on the reason for the suspension or revocation; must not have been driving during the suspension period; and will have to prove that he or she is drug-free and has completed a DUI course. If a hardship license is issued, the person will be placed under the supervision of a DUI program for a certain period of time.[115]

Housing Issues

Federally Subsidized Housing

The federal Department of Housing and Urban Development ("HUD") works with local public housing authorities ("PHAs") and private landlords to provide subsidized housing to families in need. Federal law places certain restrictions on the eligibility of prospective tenants with criminal records and current tenants must avoid engaging in certain types of criminal activity. However, the PHAs and landlords have the right to impose additional restrictions on the eligibility of people with criminal histories.

There are many different types of federal housing programs. The three largest programs are public housing, the Section 8 voucher program, and Project-Based Section 8 properties. "Public housing" is where the PHA is the landlord. The PHA owns the property, and rents it to the tenant who pays approximately 30% of their income as rent. The "Section 8" voucher program is offered by various PHAs. A Section 8 voucher allows a tenant to rent a unit on the private market. The tenant pays approximately 30% of her income towards the rent and the PHA pays the remaining portion of the rent. The tenant can rent a house, apartment, or a condominium. The "Project-Based Section 8" program is where a private landlord receives a subsidy directly from HUD. The subsidy here is "tied" to the building, so if the tenant is evicted or moves out, the tenant will no longer have subsidized housing. Tenants in Project-Based Section 8 properties pay approximately 30% of their income as rent, and HUD pays a subsidy directly to the landlord for the remaining rent.

Admission to Federally Subsidized Housing

This is a general summary of the rules that apply to an applicant seeking admission to federally assisted housing, but the rules vary from program to program. Additionally, each PHA and owner has the discretion to set its own admissions policies within certain limits. Because of this, it is important that someone who is denied admission into subsidized housing seek specific legal advice from their local legal services or legal aid office. (http://floridalawhelp.org/). In Miami-Dade County, one organization to contact is Legal Services of Greater Miami, Inc. (www.lsgmi.org).

Under federal law, a PHA and owners of most federally assisted housing *must* deny an applicant for housing assistance when the applicant or any member of the applicant's household:

- Is subject to a lifetime registration requirement under a state sex offender registration program;[116]
- Was convicted of the manufacture or production of methamphetamine on the premises of a federally assisted housing program;[117]
- Was evicted from federally assisted housing for drug-related criminal activity in the past three years, unless the person completes a rehabilitation program.[118]

Under federal law, a PHA and owners of most federally assisted housing *may* deny an applicant admission to public housing who has engaged in:

- Drug-related criminal activity; [119]
- Violent criminal activity;[120]
- Other criminal activity which threatens the health, safety, or right to peaceful enjoyment of the premises by other residents of the PHA or the landlord's staff.

The PHA or landlord may only deny an applicant who has engaged in this type of criminal activity in a reasonable time before the admission decision. However, each PHA and landlord has discretion to set its own policies regarding how long it will look back at prior criminal activity. HUD suggests a five year look back period would be reasonable for serious crimes, but many PHAs and landlords use longer periods. For example, Miami-Dade County looks at criminal activity in the past ten years.

Most PHAs and landlords will deny an application if the disposition of the criminal case was a conviction or adjudication withheld. However, sometimes the PHA or the landlord will deny an applicant based only on arrest records, even when the charges were dismissed.

If denied admission into a federal housing program, the applicant has the right to receive written notice with the specific reason for denial and an opportunity for an informal review or meeting. These reviews are very informal. At the review, the applicant can argue why the application should have been approved. The applicant may present any mitigating circumstances at the hearing.

Some applicants receive additional protections under the Violence Against Women Act ("VAWA") and the Fair Housing Act ("FHA"). The PHA or landlord may not deny an applicant if the criminal history was related to domestic violence, stalking, or sexual assault. If the criminal activity was related to an applicant's disability, the owner or PHA may be required to offer a reasonable accommodation under the FHA and admit the tenant, unless the tenant would be a direct threat.

If the applicant's household includes a person who will lead to the denial of subsidized housing, the applicant may be able to request to remove that person from the household. For example, if

an applicant's adult son was recently convicted of cocaine possession, the applicant could ask to remove her son from her application.

For detailed information about how a prior criminal history can impact housing applications, please see the National Housing Law Project's "An Affordable Home on Reentry: Federally Assisted Housing and Previously Incarcerated Individuals" (http://www.nhlp.org/guidebooks).

Participants in Federally Subsidized Housing

If a criminal defendant resides in subsidized housing, before taking a plea, it is important that the tenant seek specific legal advice from their local legal services or legal aid office. (http://floridalawhelp.org/). Again, in Miami-Dade County, one organization to contact is Legal Services of Greater Miami, Inc. (www.lsgmi.org).

The law is slightly different for each housing program, so it is important to know the type of housing (i.e., public housing, Project-Based Section 8, or Section 8 vouchers). Always review the tenant's lease, which typically contains a provision about criminal activity.

Evictions from Public Housing

In public housing, it is a violation of the lease for someone in the household to engage in:

- Criminal activity that threatens the health, safety, or right to peaceful enjoyment of other tenants or other people residing near the premises; or
- Drug-related criminal activity on or off the premises.[121]

It is also a violation of the lease and can lead to eviction if a guest staying in the unit or visiting the property at the invitation of the tenant engages in this type of criminal activity on the property.

The PHA must evict if the tenant has been convicted of manufacture or production of methamphetamine on the premises of federally assistance housing.[122] A PHA may also be able to evict a tenant if any member of the household is convicted of a felony or if they are a fleeing felon or violating a condition of probation or parole.[123]

A PHA may have a lease provision which is broader than authorized by law (i.e., it is a violation to engage in any criminal activity). In this circumstance, it is important for the tenant to consult with a lawyer.

When a PHA believes the tenant has violated the lease and engaged in criminal activity, it will send the tenant a notice of termination and file an eviction in county court. The PHA will have to prove the criminal activity under the civil burden of proof. An arrest or conviction is not required. A PHA could try to evict a tenant even if the criminal charges are dismissed, but a dismissal makes it difficult for the PHA to prove the criminal activity. If there is a finding of guilt by the criminal

court, whether by plea or conviction, the tenant will not be able to dispute the underlying facts in the civil case. Because of this, it is important that a criminal defendant living in public housing consult with a housing attorney before taking any plea.

Evictions from Project-Based Section 8

In Project-Based Section 8 properties, it is a violation of the lease for someone in the household or a guest of the household to engage in:

- Criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, persons residing in the immediate vicinity, or property management staff; or
- Drug-related criminal activity on or near the premises.[124]

It is also a violation of the lease if any member of the household is a fleeing felon or violating a condition of probation or parole.[125]

When a landlord believes the tenant has violated the lease and engaged in criminal activity, it will send the tenant a notice of termination and file an eviction in county court. The landlord will have to prove the criminal activity under the civil burden of proof. An arrest or conviction is not required. A landlord could try to evict a tenant even if the criminal charges are dismissed, but a dismissal makes it difficult for the landlord to prove the criminal activity. If there is a finding of guilt by the criminal court, whether by plea or conviction, the tenant will not be able to dispute the underlying facts in the civil case. Because of this, it is important that a criminal defendant living in Project-Based Section 8 housing consult with a housing attorney before taking any plea.

Terminations from the Section 8 Voucher Program

PHA *may* terminate a household's participation in the Section 8 voucher program if any member of the household or a guest of the household engages in:

- Drug-related criminal activity;
- Violent criminal activity; or
- Criminal activity which threatens the health, safety, or right to peaceful enjoyment of other residents residing in the immediate vicinity.[126]

The PHA must also terminate the voucher if the tenant has been convicted of manufacture or production of methamphetamine on the premises of federally assistance housing.[127]

A Section 8 participant will be given written notice and will be entitled an informal hearing conducted by the PHA. The participant is entitled to seek legal representation for the informal hearings. The rules of evidence do not apply at these hearings and the hearing officers are PHA staff. Because of the informal nature of these proceedings, sometimes the PHA will incorrectly use arrest records as evidence of the criminal activity. It is important that the tenant has legal representation at this hearing.

Public Housing Authorities in Florida

There are over 100 PHAs throughout Florida. A list of Florida PHAs is available from the HUD website at: http://www.hud.gov/offices/pih/pha/contacts/states/fl.cfm. In Miami-Dade County, there are several PHAs:

- Hialeah Housing Authority.
- Homestead Housing Authority.
- Housing Authority of the City of Miami Beach.
- Miami-Dade County, Public Housing and Community Development (PHCD).
- City of Miami, Department of Community and Economic Development.

Miscellaneous Issues

Frequently, a tenant may be facing an eviction or termination at the same time as the criminal case. In evictions, the tenant may be able to obtain a stay of the civil case in order to protect the tenant's Fifth Amendment right against self-incrimination. For Section 8 terminations, it may be more difficult to protect the tenant's Fifth Amendment rights without legal representation. If this is an issue for the tenant, it is important that he or she seek legal advice from a housing attorney.

Tenants who are the victims of domestic violence, stalking, or sexual assault have the protection of the Violence Against Women Act. They may not be evicted or terminated if the criminal activity was related to domestic violence.

If the tenant is disabled, and the criminal activity is related to a disability, under the Fair Housing Act, the landlord or PHA may be required to offer a reasonable accommodation for the disabled tenant and not proceed with the eviction. However, the individual must be able to demonstrate a nexus between the disability and the criminal activity. The landlord is not required to provide a reasonable accommodation if the tenant would be a direct threat.

Other Subsidized Housing in Florida

In addition to the housing discussed above, the largest other subsidized housing program is the Low Income Housing Tax Credit program. There are no statutes or regulations regarding evictions for criminal activity from this type of housing. The lease language will dictate whether the criminal activity is a violation of the lease.

The Florida Urban Homesteading Act: In 1999, the Florida legislature passed the Urban Homesteading Act.[128] Under this act, the Department of Economic Opportunity provides housing loans to qualified buyers.[129] A person will not qualify for this loan program if he or she

or his or her spouse has been convicted of a drug-related offense within the last three years.[130] Furthermore, a person who receives this loan must stay free of drug-related convictions for the full term of the loan.[131]

Adult Family Care Homes: An adult family care home ("AFCH") is a private residence licensed by the Florida Department of Elder Affairs. An AFCH provides housing, food, and care to older people unable to live independently. The providers in an AFCH live with the people they serve (up to a maximum of five residents). All residents in an AFCH (in addition to the providers) must pass a background screening check as a condition of eligibility.[132]

Mobile Home Parks: The owner of a mobile home park may evict a mobile home owner, tenant, or occupant if that person has been convicted of violating any state or federal law or any local ordinance, provided "the violation is detrimental to the health, safety, or welfare of other residents of the mobile home park."[133] A person with such a conviction can also be denied initial tenancy in a mobile home park under this provision.

Private Housing Issues: The Fair Housing Act provides numerous anti-discrimination protections, such as prohibiting the owner of a dwelling from discriminating against a potential buyer or renter on the basis of race, color, national origin, sex, handicap, familial status, or religion.[134] However, the Act specifically does not prohibit any discrimination against a person who has been convicted of the illegal manufacture or distribution of controlled substances.[135] In general, there is little to stop a private landlord for denying a person tenancy based on his or her criminal past.

Housing Issues for Sexual Offenders: People who are required to register as sex offenders face serious problems obtaining housing in Florida. See the section on Sexual Offenders for more details.

Employment Issues

Employment – Federal Law

Almost every job with the federal government will require the applicant to submit to a background check.[136] The extent and depth of this background check is typically proportionate to the importance and sensitivity of the position.

Due to the wide array of federal departments, agencies, and bureaus, a complete list of the federal jobs and the degree to which they screen an applicant's criminal record is beyond the scope of this

manual. However, a discussion on military service follows, given the large number of people from diverse backgrounds who consider military service as a career option.

Military Service

Under federal law, a person with a felony conviction may not enlist in the United States Armed Services.[137] In "meritorious cases," however, exceptions can be authorized.[138]

The Department of Defense ("DoD") has issued similar instructions regarding the qualification standards for enlistees.[139] These standards require that enlistees be of "good moral character."[140] This is intended to disqualify from service "individuals under any form of judicial restraint," such as bond or a term of imprisonment,[141] and "those with significant criminal records."[142] Like federal law, the DoD standards allow for a person convicted of a felony to obtain a waiver.

Whether a person will receive a waiver is a case-by-case assessment. The military considers the person's adjustment to civilian life following the conviction,[143] all of the details surrounding the offense, and any letters of recommendations from community leaders who know the applicant's character, such as school officials or law enforcement officers.[144]

A person convicted of any crime of domestic violence, including a misdemeanor, is outright barred from military service. In 1997, Congress amended the 1968 Gun Control Act to prohibit selling or providing a firearm to anyone convicted of a crime of domestic violence, including misdemeanors.[145] The law contains no exception for military personnel or law enforcement officers. Because of the need for military personnel to have access to firearms, the DoD has decided as a categorical matter that an individual with a conviction for a crime of domestic violence will not receive a waiver.[146]

Practice Tip: A person facing a felony conviction who intends to apply for military service should understand the importance of building ties with community leaders. These relationships are necessary for a successful waiver request. A person facing a conviction for any crime of domestic violence should understand that it will categorically bar him or her from military service, unless the conviction has been set aside or pardoned. See the above section on Relief for more details.

Employment – State Law

Private Employers

A person applying for a private sector job should be prepared to submit to a background check and answer questions about prior convictions, including withholds. There are close to no checks on a private employer's ability to refuse to hire or to fire an employee due to a conviction.

However, a person has the right to at least explain his or her past. If a private employer declines to hire a person due to a criminal past, the employer must:

- Inform the applicant of the name, address, and phone number of the company that supplied the criminal history report; and
- Inform the applicant of his or her right to dispute the accuracy and completeness of any information in the report, and to an additional free report from the company that supplied it, provided the applicant asks for it within 60 days of the employer's decision.

Further information can be found with the Federal Trade Commission: http://www.consumer.ftc.gov/articles/0157-employment-background-checks.

Florida currently does not have any state law prohibiting or limiting a private employer's ability to consider an applicant's criminal history. However, any person who works for a private company that provides services to a school district must submit to a background check. A person who has been convicted of certain serious offenses, including sexual offenses and child abuse, is not permitted to work on school grounds.[147]

An employer's categorical ban on hiring people with criminal convictions can have the practical effect of violating Title VII of the Civil Rights Act if it in effect disproportionately screens out a Title VII-protected group (such as an entire race).[148] However, in practice these disparate impact claims are difficult to prove.

If a private employer is a government contractor or is hiring for a government contract position, the private employer is usually required to perform the same background checks that the government entity would perform in hiring a person. A private employer in this capacity has the ability to deny employment based on a disqualifying criminal history as if it were the government entity itself. See the section below on "Employment with the State of Florida" for more details.

Professional Licenses

A professional licensing board can deny a license to a person who has been convicted of a felony or first-degree misdemeanor that is directly related to the practice of the profession or jeopardizes the public.[149]

Professional licensing boards will typically take an applicant's character into account. In doing so, no distinction is made between a withhold and an adjudication of guilt. Greater scrutiny is given to professions involving relationships of trust or vulnerable clients. This includes healthcare and social welfare related positions, as well as jobs performed in other people's home.

Please see Appendix A for a list of professional licenses in Florida that consider the applicant's background or prior convictions.

Employment with the State of Florida and Background Checks

As a general matter, no person may be disqualified from employment by the State of Florida, any of its agencies, or disqualified from employment by a municipality solely because of a prior

criminal conviction.[150] However, a person can be disqualified if the crime was a felony or first-degree misdemeanor and directly relates to the job being sought.

This protection does not apply to the following jobs:

- Any position in with law enforcement or in a correctional agency;
- Firefighters; or
- County or municipal positions deemed critical to security or public safety (for example, an airport or seaport).[151]

Background Screening

Certain jobs with the state or in regulated fields require the employee to undergo a Level 1 background check or a Level 2 security background check.[152] A Level 2 background check is more thorough and includes processing the applicant's fingerprints. Like the federal government, background checks are more likely for jobs involving working with children, vulnerable people, or otherwise placing the employee in a position of trust. As a general matter, these screening requirements apply to not only prospective employees, but to contractors and volunteers as well.

To satisfy either level of background check, the applicant:

- Must not have an open criminal case and
- Must not have been found guilty, regardless of adjudication, of the following offenses:
    - Any violation of Chapter 784 (Assault, Battery, Culpable Negligence) that constitutes a felony;
    - Any violation of Chapter 800 (Lewdness and Indecent Exposure);
    - Any violation of Chapter 812 (Theft and Robbery) that is a felony;
    - Any violation of Chapter 847 (Obscene Literature);
    - Any felony drug offense or any misdemeanor drug offense if a person involved in the crime was a minor;
    - Abusing, neglecting, or exploiting the elderly or disabled adults;
    - Any crime of domestic violence;
    - Arson;
    - Burglary;
    - Child abuse, contributing to the delinquency of a child, incest, or sexual performance by a child;
    - Depriving a law enforcement officer of protection or the means of communication;
    - Escape, aiding an escape, or harboring an escapee;
    - Exhibiting a firearm within 1000 feet of a school or possessing a weapon on school property;
    - Felony voyeurism;
    - Fraudulent sale of a controlled substance, if a felony;
    - Inhumane treatment of an inmate resulting in great bodily harm;
    - Introduction of contraband into a correctional or detention facility;
    - Killing an unborn child by injury to the mother;

- Kidnapping, false imprisonment, or luring or enticing a child;
- Lewd and lascivious offenses;
- Misdemeanor assault or battery where the victim was a minor;
- Murder, manslaughter, or vehicular homicide;
- Prostitution;
- Recruiting another to join a criminal gang;
- Resisting an arrest with violence;
- Sexual battery or unlawful sexual activity with a minor;
- Sexual misconduct with developmentally disabled or mentally ill patients; or
- Sexual misconduct in a juvenile justice program.

If the employee was adjudicated delinquent as a juvenile of any of the above offenses, to satisfy the background check the employee's record must have been sealed or expunged.[153]

Every state agency is required to designate which positions require a Level 1 background check and which positions, due to the special trust or responsibility or sensitive location involved, require a Level 2 background check.[154] Please see Appendix B for a list of jobs that require such screenings.

Exemptions from Disqualification

In certain situations a state agency can exempt an applicant who cannot pass a Level 1 or 2 background check from disqualification. The head of the state agency can grant an exemption in the following cases:

- The disqualifying conviction is a felony and three years have elapsed since the completion of the person's sentence, including probation;
- The disqualifying conviction is a misdemeanor and the applicant has completed his or her sentence, including probation; or
- The disqualifying conviction is an unsealed and unexpunged juvenile delinquency that would have been a felony if committed by an adult, and three years have elapsed since the completion of the person's sentence, including probation

In any of the above situations, the applicant must have paid all outstanding court costs, fines, fees, or restitution related to the conviction.[155]

It is the applicant's burden to demonstrate by clear and convincing evidence that he or she should not be disqualified from employment. This includes proof of rehabilitation, a discussion of the circumstances surrounding the criminal incident, the time that has elapsed since the incident, the nature of the harm caused to the victim, the history of the employee since the incident, or any other evidence indicating that the applicant will not pose a threat if hired. The agency will consider subsequent arrests and convictions, even if the subsequent cases were not disqualifying offenses themselves.[156]

An exemption from disqualification cannot be granted to sexual offenders, sexual predators, or career offenders.[157]

Background Checks and Prison Visitation

Beyond job and professional license applications, a person who wishes to visit an inmate in state prison must pass a criminal history background check.[158] The Department of Corrections "Request for Visiting Privileges" form (form "DC6-111A") requires any person who wishes to visit an inmate to disclose whether he or she:

- Has been arrested or charged with a crime.
- Has ever been imprisoned and, if so, what the person was convicted of.
- Whether the person is on probation or parole and, if so, what offense the person was on probation or parole for.[159]

This form must be completed by any person over the age of twelve who wishes to visit an inmate.[160] In deciding whether the nature or extent of a person's criminal history disqualifies them from visitation privileges, the DOC considers the following factors:

- Whether the person has been released from prison in any jurisdiction for a felony conviction within the last two years, provided that the prospective visitor was not incarcerated in the facility in which visitation is requested.
- Whether the person has been released from prison in any jurisdiction for a felony conviction within the last five years if the prospective visitor was incarcerated in the facility in which visitation is requested.
- Whether the person has been released from jail in any jurisdiction for a misdemeanor conviction within the last year.
- Whether the person is on community supervision status (i.e. probation) or has been terminated from supervision within the past one year.[161]

If the DOC requires additional documentation of a charge to make a decision about visitation privileges, the prospective visitor must provide official documentation of the disposition or circumstances of the offense in question.[162]

Restrictions on State Employment and Professional Licenses Due to Drug Convictions

As discussed above, ordinarily a conviction that is unrelated to a state job or professional license standing alone is not a basis for a denial of the job or license. Any exception exists, however, for certain drug convictions.

A person convicted of trafficking or selling a controlled substance is disqualified for a job with any state agency, or from obtaining any state issued professional license, unless the applicant:

- Has completed his or her sentence in its entirety, including probation;
- Is enrolled in or has completed a drug rehabilitation and treatment program; and

- Submits to periodic drug tests.[163]

Miscellaneous Employment Related Concerns

Practicing Law in Florida

Integrity and ethics are vital qualities for any attorney. Admission to the Florida Bar therefore includes an investigation into the character of each applicant. The primary purpose of this character and fitness investigation is "to protect the public and safeguard the judicial system."[164] Each applicant must produce "satisfactory evidence of good moral character" to the Florida Board of Bar Examiners.[165]

Contacts with the juvenile or criminal justice system can jeopardize the aspirations of any person who seeks to become a lawyer. A person convicted of a felony is ineligible to apply for admission to the Florida Bar unless and until his or her civil rights have been restored.[166] Similarly, a person on felony probation where adjudication was withheld cannot apply for bar admission until the probationary period has ended.[167]

Even a juvenile or criminal case that does not result in a felony conviction can pose serious problems for an applicant. The Florida Bar's character investigation examines whether an applicant can "avoid acts that are illegal, dishonest, fraudulent, or deceitful"[168] and comply with state and federal law.[169] Disqualifying conduct includes any behavior indicative of a lack of honesty or reliability, including any unlawful conduct.[170] In other words, even a withhold for a misdemeanor offense will raise a red flag for the Bar.

That is not to say that a criminal conviction will automatically ruin a bar application. Because the Bar is assessing the applicant's present character, in looking at prior conduct it considers factors such as the applicant's age at the time of the conduct; the recency of the conduct; and the seriousness of the conduct.[171] The Bar will also consider evidence of rehabilitation on the applicant's part; the applicant's positive social contributions since the incident; and the applicant's candor in the application process about the misconduct.[172] A person who is rejected by the Bar may apply again after two years and provide a written statement describing evidence of the applicant's rehabilitation.[173]
Practice Tip: Following a misdemeanor conviction or a withhold to a felony, a person who nevertheless wishes to one day practice law must understand the importance of demonstrating rehabilitation. Complying with all resulting court orders, successfully completing probation, and paying restitution can demonstrate a rehabilitated character to the Bar. Positive actions such as religious, community, or civic service can also help show the Bar that the applicant is now fit to serve as an attorney.

Perhaps the most important thing an applicant must be is honest about prior encounters with the criminal or juvenile justice system. Prior convictions, adjudications, delinquencies, and arrests should be fully disclosed while applying to law school and the Florida Bar. Failing to be honest

about even a minor arrest or conviction can be more damaging to an applicant's chances than the charge itself.

Court Appointed Guardians

In certain situations, a person who has become incapacitated may have a guardian appointed by the courts in order to safeguard his or her interests.[174] This can sometimes be necessary, for example, when a person is no longer able to manage his or her property or assets.

All court-appointed guardians, whether professional or non-professional, must pass a Level 2 background check.[175] A person who has been convicted of a felony cannot be appointed to be a guardian. A person who has been found guilty, regardless of adjudication, of any of the disqualifying offenses listed under Level 2 background check may not serve as a guardian. [176] A guardian can be removed upon being found guilty of any of these offenses.[177]

Courts sometimes appoint guardians ad litem to juveniles in criminal or civil proceedings. A guardian ad litem's role is to represent and advocate for the best interests of a child in these proceedings.[178] A person who wishes to serve as a volunteer with the guardian ad litem program must complete a Level 2 background check.[179] This requirement does not apply to members of the Florida Bar or licensed professionals who have undergone comparable background screening in the last five years.

Car Dealerships

If the owner of a car dealership wishes to change the ownership of the dealership, the car manufacturer or distributor must be given notice and provided with certain material to determine if they object. One valid basis for an objection is if the prospective new dealership owner has been convicted of a felony or any crime of fraud, deceit, or moral turpitude.

The owner of a car dealership in Florida has the right to designate a relative as the successor to the dealership in the event the owner dies, is incapacitated, or retires. The vehicle manufacturer may object to the succession, however, if the successor has been convicted of a felony or any crime of fraud, deceit, or moral turpitude.[180]

Education – Federal and State Concerns

Education – Federal Student Aid

A student who is convicted of any state or federal offense involving the possession or sale of a controlled substance, where the offense occurred during a period of enrollment for which the student was receiving federal student aid, is not eligible to receive federal grants, loans, or work assistance from the date of that conviction for the following periods of time:

- Possession of a Controlled Substance:
    - First Offense: One Year.
    - Second Offense: Two Years.
    - Third Offense: Indefinite.
- Sale of a Controlled Substance:
    - First Offense: Two Years.
    - Second Offense: Indefinite.[181]

Restoring Eligibility for Federal Aid: A student's eligibility for federal aid such as loans and grants can be restored before the end of the ineligibility period if the student completes a drug rehabilitation program, or if the conviction is set aside or reversed.[182]

Sex Offenses: A person is not eligible for Federal Pell Grants if he or she is incarcerated for a sexual offense or is subject to involuntary civil commitment following release for a sexual offense.[183]

Education – State Law

Florida Bright Futures Scholarship Program: The Florida Bright Futures Scholarship program was created by the Florida legislature in 1997. The scholarship program was intended to provide merit-based awards to Florida high school students planning to attend public or private universities in Florida. There are three types of Bright Futures grants: the Florida Academic Scholars Award, the Florida Medallion Scholars award, and the Florida Gold Seal Vocational Scholars award.

To be eligible for any grant under the Bright Futures program, the applicant cannot have a conviction or a withhold of any felony.[184] The only exception is if the Executive Office of Clemency has granted the student clemency. See the section on Relief for more details. Absent such clemency, even a student with an A level GPA with an adult felony conviction or withhold will be precluded from the Bright Futures program. However, if the applicant's prior adjudication or withhold was for a delinquent act as a juvenile, the applicant is still eligible to receive these scholarships.

Stanley Tate Project STARS Scholarship Program: The Stanley Tate Project provides certain economically disadvantaged high school students in Florida with prepaid college scholarships. Any student who receives this scholarship must avoid being convicted of any felony, first degree misdemeanor, or drug offense as a condition of receiving and keeping the scholarship.[185]

Notification of Conviction: If a student of a public school is convicted of a felony, or found delinquent of an offense that would be a felony if committed by an adult, the court must notify the appropriate district school superintendent within two days.[186]

Expulsion from Public School: Public schools have the power to expel any student who has been found guilty of a felony or found to be delinquent of an act that would be a felony if committed by an adult.[187]

Extracurricular Activities: School boards may use their discretion to limit the participation in interscholastic extracurricular activities of any student who has been convicted of a felony or found delinquent of an offense that would be a felony if committed by an adult.[188]

Removal from University Student Government: All state universities are required to maintain procedures providing for the suspension or removal from student government of any student government officer convicted of a felony.[189]

Expulsion from Public University: A student of a state university in Florida may be expelled or otherwise disciplined upon violation any state, federal, or municipal law.[190] A student can obtain a waiver of expulsion if he or she provides substantial assistance in the arrest and prosecution of his or her accomplices, or the arrest and prosecution of any person engaged in drug offenses.[191]

Family Issues

A criminal case can have a tremendous effect on a person's family situation. A conviction can impact a person's ability to foster, adopt, or serve as a guardian of a child. It can adversely affect a parent's visitation rights. In extreme cases it can result in the termination of parental rights.

Eligibility for Placement of a Child

Any person, including a parent, whose household is being considered by the DCF for the placement of a child is subject to a background check.[192] Any members of the person's household over the age of 12 are subject to a background check as well.

DCF may not place a child with a person, other than the child's parent, who has been convicted of the following types of felonies:

- Any felony in which the victim was a child;
- Child abuse, abandonment, or neglect;
- Child pornography;
- Domestic violence; or
- Homicide, sexual battery, or any felony involving violence, other than felony assault or felony battery where the victim was an adult.[193]

DCF may not place a child with a person, other than the child's parent, who has been convicted within the last five years of these felonies:

- Assault;
- Battery; or

- Any drug-related offense.[194]

Even if a person is not outright disqualified for placement due to his or her criminal record, DCF must consider the person's complete criminal history in deciding whether placement would jeopardize the child's safety.[195]

A person may move the court to review a decision to deny placement based on the background check. He or she will have the burden of providing sufficient evidence of rehabilitation to show that they would pose no threat to the child's safety is placement were to be allowed.[196] Evidence of rehabilitation includes consideration of how much time has passed since the incident, whether the person has paid restitution, and any other evidence indicating that the person will not present a danger to the child if the placement is allowed.[197]

Termination of Parental Rights

Family courts have to power to hear petitions to terminate a person's parental rights. A petition can be filed by the DCF, a guardian ad litem, or by any person who has knowledge of the facts alleged in the petition.[198] In the event that a parent has been convicted of killing, either by murder or manslaughter, or conspiring to kill or soliciting the death of the other parent or another child of the parent, DCF is required to file a petition to terminate that parent's rights over the child.[199]

A valid petition to terminate a person's parental rights must allege facts that show granting the petition is in the manifest best interests of the child.[200] The petition must also allege facts establishing at least one of the certain enumerated grounds. These grounds include:

- The parent is incarcerated and:
    - Will remain incarcerated through a significant portion of the child's minority;[201]
    - Has been judicially determined to be a violent career criminal, a habitual violent felony offender, or a sexual predator;[202]
    - Has been convicted of first or second degree murder, or sexual battery constituting a first degree, life, or capital felony;[203] or
    - The court determines, by clear and convincing evidence, that continuing the parental relationship with the incarcerated parent would be harmful to the child.[204] In determining whether the parental relationship is harmful to the child the court can consider the parent's criminal history, including the frequency of incarceration.[205]
- The parent has subjected the child or another child to aggravated child abuse, sexual battery, sexual abuse, or chronic abuse;[206]
- The parent has been convicted of any offense requiring him or her to register as a sex offender;[207]

- The parent has committed the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or another child;[208] or
- The parent has as an extensive history of alcohol or controlled substance abuse which renders him or her incapable of caring for the child, and has refused or failed to complete available treatment over the last three years.[209]

Termination of Parental Rights Pending Adoption

Courts have the power to terminate a person's parental rights while proceedings are pending to have the child adopted by a prospective adoptive parent.[210] One basis for terminating a person's parental rights is a finding that he or she has abandoned the child.[211] In determining whether a person has abandoned a child who is the subject of adoption proceedings, the court may consider whether the person is incarcerated and meets the additional criteria outlined above in the general termination of parental rights statute.[212]

Restrictions on Visitation Rights

In any court proceeding brought under Chapter 39 ("Proceedings Relating To Children"), certain restrictions will be placed on the ability for a person to contact his or her child if that person has been convicted of certain crimes against that child.[213]

Any person who has been convicted of the following offenses, even where adjudication was withheld, cannot have contact with the child victim without first obtaining a court order:

- Child abuse;
- Incest;
- Indecent exposure;
- Lewd or lascivious behavior;
- Removing a minor from the state or concealing a minor in violation of a court order; or
- Sexual battery.[214]

If a person convicted of any of these offenses wishes to begin or resume contact with the child, there will be a court hearing to determine whether contact is appropriate. At the hearing, the person would have to prove by clear and convincing evidence that the child's physical, mental, and emotional health would not be endangered by visitation. The court has the discretion to impose conditions or restrictions that it deems necessary to protect the child.[215]

When the DCF has decided to remove a child from the custody of a parent, the child's grandparents are entitled to reasonable visitation rights. However, if the court finds that such visitation is not in the best interests of the child, the grandparent will not be allowed to exercise visitation rights.[216]

In determining whether visitation is in the best interests of the child, the court can consider whether the grandparent has been found guilty, regardless of adjudication, of child abuse; concealing a minor in violation of a court order; incest; indecent exposure; lewd and lascivious conduct; or sexual battery.[217]

Parenting and Time-Sharing Plans Following Divorce or Separation

Following a separation or divorce, courts often create parenting plans or time-schedules to govern how the child or children's time will be split between the two parents. Courts must order that both parents share the parental responsibility, unless the court finds that this would be detrimental to the child.[218]

Evidence that a parent has been convicted of a first degree misdemeanor or felony involving domestic violence, or of an offense that would qualify as a grounds for termination of the parental right, creates a "rebuttable presumption" that sharing the parental responsibility would be detrimental to the child.[219] "Rebuttal presumption" means the court will assume that shared parental responsibility would be harmful to the child, but will allow the parent to present evidence to the contrary. If the presumption is not rebutted, shared parental responsibility may not be granted to the convicted parent. However, the convicted parent is not relieved of any pre-existing obligation to provide financial support.[220]

Where a court is presented with evidence that there is a risk that a parent may violate a parenting plan by removing the child from the state or concealing the child's whereabouts, the court may order the parent to post a bond as a financial deterrent to abducting the child.[221] In assessing the need for a bond, the court may consider whether either party has a history of domestic violence, child abuse, or child neglect.[222] The court may also consider a person's entire criminal record.[223]

Adoption

An adoption entity must report to the court if it intends to place a child for adoption in the home of a person who is not a relative or stepparent of the child.[224] Before a child may be placed in an intended adoptive home, a preliminary home study of the household must be conducted and the finding must be favorable.[225] This study must include a criminal records check.[226] A minor cannot be placed in the home if the preliminary home study was unfavorable.

In addition, a minor cannot be placed into any home if a person lives there who has been determined by a court to be a sexual predator, or who has been convicted of first or second degree murder, or sexual battery in the first degree or higher.[227]

Civil Domestic Violence Injunction

Florida law allows a person to petition the circuit court to issue an injunction for protection against domestic violence.[228] These injunctions are colloquially known as restraining orders. Although a judge can issue a domestic violence injunction regardless of whether the person accused of domestic violence has been convicted of any crime, a court can consider a person's "criminal history involving violence or the threat of violence" in deciding whether to issue the injunction.[229]

In issuing an injunction for protection against domestic violence, a court may order the person bound by the injunction to attend a batterers' intervention program. The court is required to order attendance with this program if the respondent has been convicted of any crime involving violence or the threat of violence, unless the court makes a finding that requiring the intervention program is inappropriate.[230]

Juvenile Collateral Consequences

A juvenile charged with a crime can be tried in juvenile court or, in certain situations, tried as an adult. The primary purpose of juvenile court is rehabilitation. The primary purpose of sentencing in adult court is punishment. As a result, how a juvenile is treated by the court system and the sentences that can be imposed, as well as any collateral consequences, vary drastically depending on where he or she is tried.

Juvenile Court

When a child is tried in juvenile court, the state files a delinquency petition. Delinquency proceedings have their own rules of procedure. This procedure largely resembles that of an adult trial, with the main exception being that there is no jury. Instead, the judge decides whether the state has proven that the juvenile committed a delinquent act.

If the judge finds that the state has proven its case, the child is adjudicated delinquent. A finding of delinquency is not a "conviction" under Florida law. An adjudicated juvenile is not subject to the collateral consequences ordinarily imposed on adults as a result of a conviction. For example, a child found delinquent of an offense that would be a felony if committed by an adult will not lose the right to vote. However, a delinquent child can be placed into the custody or under the supervision of the Department of Juvenile Justice ("DJJ").

A juvenile's criminal record from juvenile court is confidential and exempt from Florida's public records disclosure law.[231] However, the name, photograph, address, and crime or arrest report of a child is not confidential if the offense would have been a felony if committed by an adult.[232]

Traffic Offense Exception: A juvenile charged with a misdemeanor criminal traffic violation (such as reckless driving) will be tried in county court as opposed to the juvenile division in circuit court.[233] An adjudication in this proceeding will count as a conviction under Florida law.

Expunging Juvenile Records

A personal's juvenile criminal history is automatically expunged when the person turns 21.[234] A person between the ages of 18 and 21 can petition the court for early expunction.[235] However, this expunction happens at the age of 26 if the person was classified as a serious or habitual juvenile offender or was committed to a juvenile correctional facility.[236]

If a person who is 18 or older is charged with or convicted of a forcible felony and that person's juvenile record has not yet been destroyed, that record merges with the person's adult record.[237]

Juvenile Civil Citation

A police officer has the discretion to issue a civil citation to a juvenile who has committed a minor delinquent act in lieu of arrest. A civil citation cannot be issued if the juvenile has previously committed four or more misdemeanor offenses.[238]

Adult Court

In Florida a child who is at least 14 years old can, in certain circumstances, be tried as an adult in felony court. If a juvenile is transferred to adult court and sentenced as an adult, an adjudication counts as a conviction and can result in the imposition of any of the collateral consequences described in this guide. In other words, a juvenile convicted of a felony in adult court will lose the right to vote, will lose the right to serve on juries, and so forth.

Juveniles can be sent to adult court either by waiver; direct file; or by indictment. In some cases it is within the prosecutor's discretion where to have to juvenile tried. In other circumstances, usually involving very serious crimes, the prosecutor has discretion to keep the child in juvenile court only if exceptional circumstances exist that preclude the just prosecution of the child in adult court.[239]

<u>Potential Sentences Facing Children Tried in Adult Court</u>

Once a juvenile's pending criminal case has been transferred to adult court, he or she will be treated as an adult during the proceedings. This includes sentencing and the possibility of imprisonment. As noted above, a conviction in adult court can trigger all of the collateral described in this manual.

There is a unique sentencing option available to juveniles charged with felonies in adult court. Juveniles and certain young adults may be sentenced as Youthful Offenders ("YO"). A YO sentence is an adult sentence and will subject the juvenile to any applicable consequence detailed in this manual. A person is eligible to receive a Youthful Offender sentence if:

- The person at least 18 years old or has been transferred to adult court from juvenile court;
- The person is under 21 years old at the time of sentencing (**not** at the time of the offense);
- The current offense is not a capital or life felony; and
- The person has not previously received a YO sanction.[240]

If a court sentences a defendant as a YO, the court has the power to:

- Waive all statutory minimum mandatory sentences.[241]
- Sentence the defendant to below the bottom of the otherwise required sentencing guidelines.[242]
- Withhold adjudication even where doing so is explicitly prohibited by statute.[243]

A judge can impose the following sentences as a YO sanction:

- Probation or community control, where the total period of supervision is six years or less; or
- A split sentence of incarceration followed by probation or community control. If the defendant is sentenced to prison, the maximum sentence he or she may receive is four years in prison, followed by two years of probation or community control.[244]

If a defendant designated as a YO who is on probation is accused of violating his or her sentence, the maximum sentence that can be imposed depends on whether the probation violation was technical or for a new offense.

- If the violation is technical (e.g., failing to abide by curfew), the maximum sentence the court may impose is six years in prison or the statutory maximum for the charged offense, whichever is lower.[245]
- If the violation is substantive (e.g., a new offense), the court may revoke the client's supervision term and sentence him or her to a term of incarceration up to the statutory maximum for the underlying offense.

Practice Tip: When dealing with a juvenile client charged with a serious offense, the preferred outcome is keeping him or her in juvenile court, or at least securing a juvenile adjudication in adult court. While a YO sentence is preferable to an ordinary adult felony conviction, it nevertheless carries all of the baggage, disqualifications, and collateral consequences as any felony conviction.

Education Consequences for Juveniles

School districts in Florida are required to adopt a zero tolerance policy with regards to students who engage in actions that pose a serious threat to safety. These policies are not meant to be applied to every fight, minor disturbance, or misdemeanor.[246] However, for certain serious offenses schools are required to notify the authorities and even expel the student.

The following offenses must be reported to the juvenile justice system and require a mandatory expulsion of at least one year:

- Bringing or possessing a firearm at school, on school property, or at a school function; or
- Making a false report or threat to school personnel, property, transportation, or a school-sponsored activity.[247]

The superintendent may waive the expulsion requirement on a case-by-case basis and request that it be modified to assign the student to a disciplinary program or a second chance school if it is determined to be in the best interest of the student and the school system.

A student who commits an assault, battery, or aggravated assault or battery on a school district employee must be expelled or placed in an alternative school setting or other program.[248]

If a juvenile is found delinquent or guilty of certain serious felonies, and the victim or the victim's siblings attend the same school as the juvenile, the school will take steps to ensure the safety of the victim. The crimes that require these steps are:

- Abuse of a child;
- Assault, battery, or culpable negligence;
- Carjacking;
- Home-invasion robbery;
- Homicide;
- Kidnapping, false imprisonment, luring or enticing a child, and custody offenses;
- Lewdness or indecent exposure;
- Robbery, including robbery by sudden snatching; and
- Sexual battery.

The DJJ will notify the school district of the conviction or delinquency, regardless of adjudication. The school district in turn will ensure that any stay away or no contact order is enforced, and ensure that the offender does not attend the same school or ride on the same bus as the victim. If there is no other school available to the offender and he or she has to attend the same school as the victim, the school will take steps to keep them separated. Additional transportation costs that arise out of those requirements will be the responsibility of the juvenile and/or his or her family.[249]
If a juvenile is taken into custody for any offense that is a crime of violence or that would be a felony if committed by an adult, law enforcement must notify the school district superintendent about the allegation.[250] If a child is formally charged with a felony or a delinquent act that would be a felony if committed by an adult, the prosecutor must notify the superintendent of the child's school, who in turn must notify appropriate school personnel, including the principal of and the school's director of transportation.[251]

For more information on the post-secondary educational consequences of a conviction, please see the Education section.

Driving Privilege Consequences for Juveniles

A juvenile convicted of any traffic offense that would cause an adult to lose their license (drag racing for example) will likewise lose his or her learner's permit or license.[252] A juvenile who fails to pay court costs or non-criminal traffic tickets can also lose his or her driving privilege. In addition, certain offenses can result in a license suspension for juveniles:

- Firearms: If a juvenile is convicted or adjudicated delinquent of possessing a firearm, for the first offense his or her learner's permit or license will be suspended for up to one year.[253] For a second or subsequent offense, the juvenile's license will be suspended for up to two years.[254]

- Theft: A juvenile adjudicated delinquent or found guilty as an adult of petit theft or misdemeanor retail theft may have his or her learner's permit or license revoked for six months to a year, rather than being sentenced to probation, secure detention, or incarceration.[255] This option is only possible if the juvenile has not previously been convicted of any criminal offense, regardless of adjudication.

- Drugs and alcohol: If a juvenile is found guilty or adjudicated delinquent for underage possession of alcohol, selling or providing alcohol to a minor, or any drug offense, his or her learner's permit or license can be revoked for up to one year for the first offense, and revoked for up to two years for subsequent offenses.[256]

Firearms and Juveniles

Any firearm unlawfully possessed by a minor will be seized by law enforcement upon arrest and disposed of.[257] Furthermore, law enforcement agencies may release the name of any juvenile who has been convicted of any offense involving the use or possession of a firearm.[258]

A person who is less than 24 years old and was previously found to be delinquent of an offense that would be a felony if committed by an adult may not ever possess ammunition or a firearm, unless his or her civil right to possess firearms has been restored.[259]

Juvenile Sexual Offenders

A person convicted of certain sexual offenses must register as a sexual offender. See the Sexual Offender section for more details. This requirement applies to any person adjudicated delinquent of committing the following offenses, provided that the juvenile was 14 years old at the time of the offense, and the adjudication occurred after July 1, 2007:

- Lewd and lascivious battery with a person under 16 involving force;
- Lewd and lascivious molestation;
- Lewd and lascivious conduct involving force; or
- Sexual battery.[260]

A juvenile adjudicated delinquent of less serious sexual offenses can nevertheless be subject to certain direct and collateral consequences. A "juvenile sexual offender" is a child of any age who has been found delinquent of:

- Coercing another into prostitution;

- Deriving proceeds from prostitution;
- Lewdness or indecent exposure;
- Sexual performance by a child;
- Sexual battery;
- Transmitting obscene material to a minor; or
- Any felony involving "juvenile sexual abuse." Juvenile sexual abuse is any nonconsensual or coercive sexual behavior. [261]

Commitment: At a juvenile sexual offender disposition hearing (the equivalent of a sentencing hearing in juvenile cases), the child may be committed to a program for juvenile sexual offenders. If this occurs, the period of commitment is indeterminate (in other words, not defined) but cannot exceed the juvenile's 21st birthday or the maximum term of imprisonment that an adult may serve for the same offense.[262]

Alternative Treatment: Instead of juvenile sexual offender commitment, a court has the power to consider whether a community-based treatment alternative is appropriate. If the court orders such an alternative, the juvenile will undergo outpatient juvenile sexual offender treatment for up to three years. If the juvenile violates any condition of his or her treatment plan, the court can revoke the alternative treatment and order commitment.[263]

Notification: If a juvenile is in the custody or under the supervision of the DJJ and has been accused of juvenile sexual abuse or pled or been found guilty, regardless of adjudication, of certain sexual offenses, the DJJ shall disclose the presence of the child to the relevant school district superintendent.[264]

Similarly, the DJJ must notify schools, law enforcement agencies, and the court when a juvenile sexual offender returns to the community.[265] The FDLE or local law enforcement in turn will release the juvenile's identifying information to any person who requests it and to the community at large if it decides that is necessary for the protection of the community.[266]

Immigration Issues

A non-citizen's immigration status can be seriously impacted by a criminal conviction. A person can become deportable, inadmissible, ineligible to adjust status to U.S. Citizenship, or obtain relief such as asylum or Temporary Protected Statusfollowing certain convictions. Recognizing the gravity of these consequences, the Supreme Court ruled in 2010 that a defense attorney has an affirmative obligation to inform a client about the potential immigration consequences of a plea offer.[267]

Practice Tip: The failure to inform a client about the immigration consequences of a plea can constitute ineffective assistance of counsel. Any criminal defense attorney should become familiarized with the contours of this area of law. Consultation with an outside expert in

immigration law may sometimes be a good idea to ensure that the client is being fully and properly advised. It is also important to remember that because immigration law is federal, a withhold of adjudication in Florida will still count as a conviction for purposes of federal law.[268]

Because federal immigration law is voluminous and complex, a complete analysis of immigration consequences is beyond the scope of this publication. This manual discusses the specific areas of inadmissibility and deportability.

Inadmissibility

Admissibility refers to a non-citizen's ability to legally enter, remain, or adjust their status. Becoming inadmissible can impact any non-citizen who may seek entry, re-entry, or adjustment of status in the United States.
The following are grounds for inadmissibility:

- A conviction for or admitting to having committed a crime of moral turpitude;
    - Federal case law determines whether a state or federal crime is one of "moral turpitude." Examples of crimes of moral turpitude include burglary and crimes of violence (where the sentence is less than a year).
- A conviction for or admitting to having committed any controlled substance violation;
    - It is possible to secure a waiver if the non-citizen's only drug offense pertains to possession of less than 30 grams of marijuana.
- A conviction for two or more offenses, if the aggregate of the sentences was more than five years of confinement;
- Having engaged in prostitution or commercialized vice within the last 10 years; or
- Illegal presence in the country (i.e., remaining in the country without legal authorization).[269]

Deportability

A non-citizen who has been formally admitted into the United States may be subject to deportation following certain convictions. This risk applies to immigrants (such as lawful permanent residents) as well as non-immigrants (people visiting the U.S. on a visa). The following can be grounds for deportation:

- Being unlawfully in the country while inadmissible or in violation of immigration law, including remaining on a revoked visa or violating a condition of entry;
- A conviction for a crime of moral turpitude within five years of admission, provided the offense was punishable by a year or more in prison(i.e., was a felony);
- A conviction for two or more crimes of moral turpitude, without regard for when the convictions occurred or whether they were felonies;
- A conviction for an aggravated felony;

    - Examples of aggravated felonies include murder, rape, sexual crimes against children, drug trafficking, and kidnapping. The chances of deportation are very high following a conviction for such an offense. Any crime of violence or burglary, theft, perjury, or obstruction of justice that rises to the level of a felony is also an aggravated felony.
- A conviction for any drug law, except for simple possession of less than 30 grams of marijuana;
- A conviction for a firearms offense (e.g., unlawfully purchasing, selling, or possessing a firearm);
- A conviction for a crime of domestic violence, stalking, child abuse, or violation of a protection order;
- A conviction for human trafficking;
- A conviction for high speed flight from an immigration checkpoint;
- A conviction under federal law for failing to register as a sex offender; or
- A conviction for the falsification of immigration documents.[270]

The above list is not exhaustive. Other convictions for less common crimes that can trigger deportation can be found in 8 U.S.C. § 1227.

Practice Tip: Multiple convictions for misdemeanors that constitute crimes of moral turpitude can trigger deportation consequences. Non-citizens charged with such misdemeanors (like petit theft) should be made aware of this possibility.

Other Immigration Consequences

A criminal conviction or history can also adversely impact a non-citizen's ability to seek asylum, become a lawful permanent resident, or become a citizen. Some of these issues will depend on the non-citizen's country of origin.

For example, as a matter of foreign policy the United States use to not deport people to Cuba. However, in December 2014 the Obama Administration declared an intent to normalize relations with Cuba. In January of 2017, the United States formally ended the "wet foot / dry foot" policy, which had previously expedited Cuban nationals for "legal permanent resident" status if they reached the U.S. mainland. It is now very possible that the federal government will resume deporting Cuban citizens convicted of deportable offenses. Practitioners of criminal law in South Florida and elsewhere should remain on top of developments in this area.

A juvenile adjudication is not a "conviction" for immigration purposes. However, it does have negative immigration consequences. DHS/ICE will consider "Bad Acts" of a juvenile, which cover prostitution, drug trafficking, drug abuse, domestic violence, mental disability, gang activity and certain sex offenses.

Practice tip: The immigration consequences of a case depend on the nature of the charge, the non-citizen's legal status, country of origin, and his or her future goals. It is worth repeating that consulting an expert in immigration law is always a good idea to ensure that a defendant is properly advised.

Property Forfeiture

The Florida Contraband Forfeiture Act

The Florida Contraband Forfeiture Act allows for the seizure and forfeiture of certain personal or real property that is designated as contraband.[271] Civil forfeiture actions are heard in the civil division of the Circuit Court and are controlled by the Rules of Civil Procedure.[272]

Contraband includes:

- Any controlled substance;
- Any substance, device, paraphernalia, or currency used to violate a controlled substance law, provided the state can prove a connection between the article and narcotics activity;
- Gambling paraphernalia, lottery tickets, money, or currency used in violation of state gambling laws;
- Any equipment, liquid, or solid used in violation of state beverage and tobacco laws;
- Motor fuel upon which the motor fuel tax has not been paid;
- Any personal property (e.g., cars, planes, boats currency, weapons, tools) or real property (e.g., title to land) used to commit a felony, or acquired by proceeds that violate the Florida Contraband Forfeiture Act;
- Any vehicle unlawfully offered for sale by a nonresident who is unqualified as a dealer;
- Any vehicle driven by a person driving under the influence if his or her driver's license was actively suspended for a prior DUI;
- Any video or photo taken in violation of the video voyeurism statute; or
- Any personal or real property acquired by proceeds obtained through Medicaid fraud.[273]

It is against the law to possess, transport, or sell any of the above contraband.[274] In the event that the possession of any of the above contraband is in itself a felony (e.g., possession of cocaine), the car, vessel, aircraft, or other personal or real property on which the contraband is located will also be subject to forfeiture as contraband.[275] However, a seizure of property may occur only if the property's owner is arrested for a criminal offense that forms the basis for determining that the property is contraband.[276]

Once the property has been seized, the law enforcement agency that did the seizure acquires all rights to the property, though it cannot use or sell it until the agency's rights to the property are perfected (perfection means the agency has full right to and owns the property completely).[277]

Property may not be forfeited without the law enforcement agency first proving by a preponderance of the evidence that the owner knew or should have known that the property was being used for criminal activity.[278]

Personal Property

Personal property can be seized by law enforcement at the time of the violation, so long as the owner of the property is given notice of his or her right to an adversarial preliminary hearing.[279] At this hearing the seizing agency has to establish probable cause that the property was used in a manner violating the Forfeiture Act.[280]

The decision to seize currency must be made by a supervisor in the law enforcement agency.[281]

Real Property

Real property is afforded slightly more protection from forfeiture than personal property. Real property cannot be seized under the Forfeiture Act until the owner of the property is given the opportunity to attend a pre-seizure adversarial preliminary hearing.[282]

Jointly Owned Property

Property that is jointly owned by spouses cannot be subject to forfeiture unless the law enforcement agency can show by a preponderance of the evidence that the co-owner knew or should have known that the property was being used for criminal activity.[283]

The Forfeiture Hearing

At any civil forfeiture hearing, the law enforcement agency must prove beyond a reasonable doubt that the contraband article was being used in violation of the Florida Contraband Forfeiture Act.[284] If this burden of proof is met, the state's right to the article of property has been perfected – they now fully own the property.

If the agency fails to make this showing, the claimant is entitled to the immediate return of the property unless the agency appeals.[285] Upon prevailing, the seizing agency cannot assess any towing charges, storage fees, administrative costs, or maintenance costs against the claimant with respect to the returned property.

Other Types Of Forfeiture

Firearms and Weapons

Following any arrest, the arresting officer must seize any weapons found on a person and give them to the county sheriff or the police chief of the municipality where the offense occurred.[286] The sheriff or police chief is required to maintain possession of the weapon until after the trial of the person arrested.

If a person is convicted of any offense involving the use of a weapon, that weapon will be forfeited to the state.[287] However, a person is entitled to the return of a weapon if he or she is acquitted or if the charge is dismissed.[288]

Gambling Proceeds

All money or prizes obtained through an illegal gambling operation are subject to forfeiture in a civil action brought by the Department of Legal Affairs or a state attorney.[289]

Racketeering

Under the Florida RICO Act, it is illegal to use proceeds knowingly obtained from racketeering to acquire the rights to real property (e.g., land) or the rights to the ownership of a business.[290] A person convicted of racketeering may be ordered to divest himself or herself of any interest in the enterprise.[291] Furthermore, all real and personal property used in a racketeering scheme or derived from racketeering is subject to civil forfeiture.[292]

Illegal Fishing Equipment

A person convicted of using illegal fishing equipment will have the property seized and forfeited.[293] A person can also have fishing equipment, including boats and vehicles, confiscated following a conviction for the illegal possession of saltwater products.[294]

Alcohol Forfeiture

A person accused of violating state liquor law can have the alcohol in question seized by the police. If the person is convicted, the police can sell or destroy the alcohol.[295]

Subsequent Criminal Cases and Interactions with Law Enforcement

Police officers can access a person's criminal record through their computers or dispatch. During police-citizen interactions, the officer will most likely become aware of the citizen's prior record. Officers often have a great deal of discretion in deciding whether to arrest someone. In situations

involving low-level offenses, prior convictions can make the difference between being let go with a warning and being arrested.

Pre-trial Bond

Under the Florida Constitution, there is a presumption that all defendants are entitled to pre-trial release on reasonable conditions.[296] The purpose of release conditions is to ensure the safety of the community and the defendant's appearance at trial. In determining whether to grant a defendant accused of a crime a bond or some other form of pre-trial release, the judge will consider the defendant's prior convictions.[297] Prior convictions can reduce the chances of release on non-monetary conditions and can result in an elevated bond.

In certain situations a defendant can be detained pretrial without bond. These include:

- The defendant is charged with a dangerous crime (certain serious felonies and any act of domestic violence, including misdemeanors) and the court finds there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons;[298]
    - A defendant's prior convictions are relevant to that assessment.
- The defendant is charged with DUI manslaughter and has previously been convicted of DUI or driving with a suspended license;[299] or
- The defendant was on probation or parole at the time of the new offense.[300]

Pre-trial Intervention Programs (Diversion)

A defendant charged with a misdemeanor or a third degree felony may be eligible for a pretrial intervention program (PTI).[301] This program involves counseling, supervision, and treatment. The successful completion of PTI will result in the dismissal of the charges.[302] To be eligible for PTI, the defendant must have no prior convictions or no more than one prior conviction for a nonviolent misdemeanor.[303]

Practice tip: A first time defendant should be made aware of the possibility of PTI, and should also know that a conviction for a violent misdemeanor or a felony may close the door to PTI in future cases.

Substance Abuse Exception: A person charged with a non-violent felony and who has a substance abuse problem, or a person charged with second or third degree felony purchase or possession of a controlled substance, prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud, may be eligible for a pretrial substance abuse education and treatment intervention program, commonly administered through the drug court, provided the person has no prior felony convictions.[304] In effect, this allows PTI for people who would otherwise be ineligible due to the degree of the charge or multiple prior nonviolent misdemeanor convictions. However, if a person wants to transfer the drug court case supervision

to another county, the person will be required to enter a plea, and thus potentially trigger all the serious consequences listed in this manual.[305]

In Miami-Dade County, a person with drug-related prior convictions may also be eligible for Drug Court. This program, overseen by the court system, is designed to help the defendant overcome his or her drug problem and can result in a case being dismissed. For more information, see http://www.miamidrugcourt.com/.

Plea Bargaining

As the Supreme Court itself has come to recognize, "criminal justice today is for the most part a system of pleas, not a system of trials."[306] The majority of cases resolve through a negotiated plea bargain. This is partly because Florida's statutory sentencing scheme, minimum mandatory sentences, and sentencing enhancements often make the risks of going to trial far too high for the average defendant.

There is very little that limits the prosecutor's discretion in plea bargaining. Subject to very few checks grounded in due process, a prosecutor is typically free to offer whatever plea bargain he or she chooses. However, in cases involving physical or emotional injury or trauma to the victim, or cases with a minor victim or a homicide, the prosecutor must consult the victim, the minor's family, or the decedent's family about any plea agreement and possible sentence.[307]

In calculating a plea bargain, prosecutors consider the severity of the current charge, the facts of the case, the victim's wishes, and the aggravating and mitigating factors. This includes an examination of the defendant's prior record. As a rule of thumb, the more prior convictions a defendant has, the worse the plea he or she will be offered.

Impact on Subsequent Testimony

A conviction can have serious consequences on a person's chances of being believed in future legal situations. The credibility of any witness in Florida may be impeached with a qualifying conviction. To qualify, the prior conviction must be for an offense punishable by over one year in prison (i.e., a felony).[308] If the conviction was for a crime involving dishonesty or a false statement, it can be used to impeach the witness regardless of whether the crime was a felony or a misdemeanor. However, this impeachment cannot be done in civil trials if the conviction is too old to have any bearing on the witness' credibility. No witness may be impeached with his or her prior juvenile adjudications.

Reclassification of Offenses

Certain misdemeanor offenses can become felonies if the defendant has been convicted of them in the past:

- A person who commits misdemeanor battery and who has a prior conviction for battery, aggravated battery, or felony battery can be charged with a felony.[309]
- A person who commits petit theft and has two prior convictions for petit theft can be charged with a felony.[310]
- A person who commits DUI and has three prior DUI convictions can be charged with a felony.[311]
- A person who commits the offense of driving with a suspended license and has two or more prior convictions for this offense can be charged with a felony.[312]
- A person who fraudulently sells an electronic benefits transfer (EBT) card and has been previously convicted of this offense can be charged with a felony.[313]
- A person who violates a domestic violence injunctions and has two or more prior convictions for this offense against the same victim can be charged with a felony.[314]
- A person who threatens a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, elected official, or any of their family members with death or serious bodily harm can be charged with a felony if he or she has two prior convictions for this offense.[315]
- A person who procures another for purposes of human trafficking can be charged with a third degree felony if he or she has a prior conviction, and a second degree felony with two or more prior convictions.[316]
- A person who commits the offense of sexual cyber harassment can be charged with a felony if he or she has previously been convicted of this offense.[317] A person who violates an injunction for protection against exploitation of a vulnerable adult can be charged with a felony if he or she has two prior convictions for this offense.[318]

Sentencing Enhancements

There are various sentencing enhancements in Florida that can or sometimes must be imposed on a defendant due to his or her prior record. These enhancements increase the maximum time a defendant will serve for an offense, impose a mandatory minimum sentence, or both.

Habitual Offender: A defendant convicted of a felony offense and who has at least two prior felony convictions can be sentenced as a habitual offender ("HO"). This enhancement increases the maximum for the sentencing offense as follows:

- From 5 years to 10 years for a third degree felony.
- From 15 years to 30 years for a second degree felony.
- From 30 years to life for a first degree felony.

This enhancement cannot be imposed if the sentencing offense and one of the prior felony convictions are for the purchase or possession of a controlled substance.[319]

Habitual Violent Offender: A defendant convicted of a felony offense and who has at least one prior felony conviction for certain enumerated, violent crimes can be sentenced as a habitual

violent offender ("HVO"). This increases the potential maximum for the sentencing offense, like an HO. It also requires the following mandatory minimum sentences to be imposed:

- 5 years for a third degree felony.
- 10 years for a second degree felony.
- 15 years for a first degree felony or a felony punishable by up to life.[320]

Three-time Violent Felony Offender: A defendant convicted of certain felonies and who has at least two prior adult convictions for certain enumerated, violent crimes can be sentenced as a three-time violent felony offender ("3x VO"). Unlike HVO, the sentencing offense must also be one of the enumerated violent offenses. This sentencing enhancement requires the trial court to impose the following mandatory minimum sentences:

- 5 years for a third degree felony.
- 15 years for a second degree felony
- 30 years for a first degree felony.
- Life in prison for any life felony.[321]

Violent Career Criminal (Gort Act): A defendant convicted of certain felonies and who has at least three prior adult convictions for certain enumerated, violent crimes can be sentenced as a three-time violent felony offender ("GORT"). Like the 3x VO enhancement, the sentencing offense must also be one of the enumerated violent offenses. This sentencing enhancement works in the following way:

- Increases the maximum sentence for third degree felonies to 15 years and requires a 10 year mandatory minimum sentence.
- Increases the maximum sentence for second degree felonies to 40 years and requires a 30 year mandatory minimum sentence.
- Requires a mandatory life sentence be imposed for first degree or life felonies.[322]

Prison Releasee Reoffender Enhancement: A defendant who commits certain felonies within three years of being released from prison or while serving a prison sentence can be sentenced as a prison releasee reoffender ("PRR"). The defendant's sentencing offense must be one of the enumerated offenses, which includes any forcible felony and a burglary of an occupied structure or dwelling. This sentencing enhancement requires the trial court to impose the following mandatory minimum sentences:

- 5 years for a third degree felony.
- 15 years for a second degree felony
- 30 years for a first degree felony.
- Life in prison for any offense punishable by up to life.[323]

Timing: To qualify for an HO, HVO, or 3x VO sentencing enhancement, one of the defendant's previous felony convictions must have occurred within the last five years. A conviction is within the window if the defendant was on probation or supervision for it in the preceding five years.

Mandatory vs. Permissive: A trial court is statutorily required to impose a 3x VO, GORT, or PRR enhancement if the defendant qualifies for it. The court must also impose an HO or HVO sentence unless it files written findings that such a sentence is not necessary to protect the public.

Clemency: An HO, HVO, 3x VO, or GORT enhancement cannot be applied if a necessary predicate conviction was previously pardoned, reversed on appeal, or set aside in collateral proceedings.

Calculation of Sentence

Florida, like many other jurisdictions, has adopted sentencing guidelines to be used in felony cases.[324] These guidelines calculate the minimum sentence a person convicted of a felony can receive. A withhold of adjudication counts as a prior offense when calculating a defendant's guidelines.[325]

A judge cannot go below the bottom of these guidelines without making written findings. The guideline calculation not only takes into account the severity of the current charge, but also considers every prior offense. Even if a defendant's prior convictions do not result in a sentencing enhancement, prior convictions will nevertheless raise the bottom of a defendant's sentencing guidelines in the future.

Practice Tip: In negotiating a plea, it is always preferable to obtain a plea to a crime of a lesser degree. While a plea offer for a serious charge that involves no prison time can be very appealing, this conviction can have serious consequences in future cases.

Post-trial Bond

Following a conviction, certain defendants may seek a supersedeas bond to obtain post-trial release pending the outcome of the appeal. A person is not entitled to post-trial release if he or she has was convicted of a felony, has previously been convicted of a felony, and has not had his or her civil rights restored.[326]

Practice Tip: Even if a defendant has prior felony convictions, he or she can seek a post-conviction bond if he or she was only convicted of a misdemeanor.[327]

Felon Registration Requirements

A person convicted of a felony in Florida must register with the county sheriff within 48 hours of the conviction. A person entering Florida who has been convicted in federal or state court of an offense that would be a felony in Florida must also register. The failure to register is a misdemeanor offense.[328]

A person is not required to register if five years have passed since he or she has been released from incarceration and completed probation for the felony conviction, unless he or she is a fugitive from justice on a felony charge or has been convicted of any offense since release.[329]

Firearms, Weapons, and Recreational Licenses

Firearms - Federal Law

Under federal law, a person may not possess a firearm or ammunition if he or she:

- Has been convicted of a felony in any jurisdiction, state or federal;
- Is a "fugitive from justice";
- Is an unlawful user of or addicted to a controlled substance;
- Is under a court order that restrains the person from harassing, stalking, or threatening an intimate partner; or
- Has been convicted of any misdemeanor that qualifies as a crime of domestic violence.[330]

These restrictions can jeopardize a person's ability to serve as a law enforcement officer or in the armed forces. See the Employment section for further details.

Firearms - State Law

General Ownership

A person may not possess a firearm or ammunition in Florida if he or she has been convicted of a felony under any state or federal law.[331] A firearms dealer may not sell a firearm to a buyer without first requesting the FDLE to perform a criminal history record check.[332] A person who qualifies as a violent career criminal (even if he or she has never previously been sentenced as such) is additionally forbidden from possessing any electric weapon.[333]

Concealed Weapons Permit

Ordinarily, a state agency may not deny an application for a permit or license based solely on the applicant's lack of civil rights[334] (a consequence of any felony conviction). However, this protection does not extend to applications for a license to carry a concealed weapon or firearm.

In Florida, it is illegal to carry a concealed weapon or firearm without a valid license.[335] The Department of Agriculture and Consumer Services has the power to issue a license authorizing a person to carry a concealed weapon.[336]

The following make a person ineligible to receive a concealed weapons permit:

- A conviction for a felony (a withhold does not count);[337]
- A conviction of any drug offense in Florida or in any other state, provided that the conviction occurred within the last three years;[338]
- A finding that the applicant chronically abuses drugs or alcohol; or
    - A person is presumed to be a chronic substance abuser if, in the three years preceding the application, he or she has been: convicted of using a firearm while under the influence; deemed a habitual offender under the disorderly intoxication statute (which requires three convictions for disorderly intoxication in a one-year period); or convicted two or more times of DUI.[339]
- A conviction or a withhold for any felony or misdemeanor that is a crime of domestic violence, unless three years have elapsed since the person successfully completed probation, or the person's record has been sealed or expunged.[340]

A person who already has a concealed weapons permit will have his or her license revoked upon conviction for the above offenses.[341]

Practice Tip: Even a misdemeanor can jeopardize a person's ability to obtain a concealed weapons permit if the charge is drug-related. While a person charged with possession of marijuana or possession of drug paraphernalia, both misdemeanors, may not be facing prison time, efforts should be made to avoid an adjudication if that person has any interest in obtaining or keeping a concealed weapons permit.

Risk Protection Orders

Following the tragic shooting at the Marjory Douglas Stoneman Highschool in 2018, Florida enacted legislation allowing for law enforcement officers to petition a court for a "risk protection order," which can result in a court temporarily taking a person's firearms away from them.[342] In deciding whether to grant the petition, the court may consider whether the person has previously been convicted of any crime of domestic violence or any crime involving violence or the threat of violence.

Relief: Specific Authority to Own, Possess, or Use Firearms

While a person can apply to the Florida Clemency Board for the restoration of his or her civil rights, this restoration will not automatically give a person the right to possess firearms again. The only way a person can lawfully possess a firearm following a felony conviction is to specifically apply for and obtain the specific authority to possess firearms. See the section on Relief and Civil Restoration for more details.

Body Armor

While some states prohibit the ownership of body armor by convicted felons, Florida does not have such a blanket ban. The possession of body armor while committing certain serious, enumerated felonies, however, is in itself a crime.[343]

Boating

A person who has been convicted of any criminal offense under the Florida Vessel Safety Law, regardless of whether adjudication was withheld, must complete a boating safety course.[344] A person must refrain from operating a vessel until this course has been completed. Offenses that trigger this requirement include leaving the scene of a boating accident, reckless operation of a vessel, boating under the influence, subsequent refusal to submit to a breath test, and knowingly operating a vessel in restricted safety zone.

Hunting and Fishing

It is a crime to make a false sworn statement in order to obtain a recreational hunting or fishing license. A person who commits this offense will also have the license or permit in question voided.[345]

Civic and Civil Rights

Voting

In Florida a person convicted of any felony is not allowed to vote unless his or her civil rights have been restored.[346] A withhold of adjudication will preserve the person's right to vote. However, other jurisdictions may consider a withhold to a felony charge to be a conviction, which could impact the person's ability to vote in other states.

Elected Office and Public Service

No person convicted of a felony may hold elected in Florida unless his or her civil rights have been restored.[347]

Jury Service

A person may not serve on any federal jury if he or she is currently charged with or has been convicted in any state or federal court of any crime punishable by over one year in prison, unless that person's civil rights have been restored.[348]

Florida law prohibits an even broader class of people from serving on juries. In Florida, a person may not serve on a jury if he or she is currently charged with or has been convicted, in any state or federal court or in any territory or country, of bribery, forgery, perjury, larceny, any felony, or any offense that would be a felony had it been committed in Florida.[349]

Practice Tips:

- While only felony convictions will deprive a person of the right to vote, even a conviction for second degree misdemeanor petit theft (e.g., taking a candy bar) can strip a person of the right to jury service. A client should be informed of this before accepting any plea offer involving a conviction in any misdemeanor larceny case.

- In criminal cases, the juror questionnaire asks prospective jurors about *any* contact with the criminal justice system, including arrests.[350] Prosecutors are entitled to ask about these contacts during jury selection, even if the case resulted in a withhold of adjudication or a dismissal. Potential jurors interested in exercising their civic rights should disclose all prior arrests during jury selection.

Passport and Travel

A person is ineligible for a passport if he or she has been convicted of a federal or state felony drug offense and used a passport or crossed an international border in committing the offense.[351] This prohibition also applies to federal and state misdemeanor drug offenses. The period of ineligibility applies as long as the person is either imprisoned or on parole or supervised release following the conviction.

Different countries may deny visas or admission to any person with certain criminal convictions. This varies depending on the country and the offense. A person with a criminal history should contact the embassy or the consulate of the foreign country in question before traveling.

Name Changes

A person cannot apply for a name change if his or her civil rights have been suspended without being later restored.[352]

DNA Sample Collection

The Florida Legislature has directed the FDLE to create a DNA database to facilitate criminal investigations.[353] The DNA Database law requires the FDLE to obtain DNA samples from any "qualifying offender" who is arrested, incarcerated, or under court-ordered supervision (e.g., probation) in Florida.[354] "Qualifying offenders" include any person, including juveniles, who is:

- Committed to a county jail;
- Committed to the Department of Corrections;
- Committed to the Department of Juvenile Justice; or
- Transferred to Florida under the Interstate Compact on Juveniles or under the Interstate Corrections Compact;

and who has been:

- Convicted of any felony in Florida or a similar offense in another jurisdiction;
- Convicted of the certain enumerated misdemeanors (the most common being stalking and voyeurism);
- Convicted of any offense for the purpose of benefiting a criminal gang; or
- Arrested for any felony in Florida.[355]

A person convicted of a qualifying offense must pay the actual costs of collecting the DNA sample, unless the person is declared indigent by the court.[356] Law enforcement and correctional officers are entitled to use "reasonable force" to obtain a sample of a person who qualifies under the statute and refuses to provide a sample.[357] The willful refusal to provide a DNA sample by a person who qualifies under the statute is a second degree misdemeanor.[358]

There are limited ways to be removed from the DNA database following a qualifying conviction. If a qualifying conviction is overturned on direct appeal or set aside in a post-conviction proceeding, the person may provide the FDLE with a certified copy of a final court order establishing that the conviction has been overturned or vacated.[359] Once the FDLE verifies the accuracy of this information, it must remove the person's DNA sample from the database. However, a person is *not* entitled to be removed from the database if the FDLE determines that the person is otherwise required to submit a sample regardless of the overturned conviction.

A person seeking to have his or her information removed from the DNA database following a conviction being overturned or vacated should mail the certified documentation described above to the following address: FDLE DNA Investigative Support Database, P.O. Box 1489, Tallahassee, Florida 32302-1489.[360]

HIV Testing

Mandatory Testing After Conviction: A person who has been convicted of the following offenses, regardless of whether adjudication was withheld, where the offense involved the transmission of body fluids, will be ordered to undergo HIV testing:

- Abuse or aggravated abuse of an elderly or disabled person;
- Assault, battery, assault or battery on a law enforcement officer, assault or battery on a person over 65, aggravated assault, aggravated battery;
- Child abuse and aggravated child abuse;
- Human trafficking;
- Incest;
- Knowingly donating blood while HIV positive;
- Lewd and lascivious offenses committed in the presence of a minor;
- Prostitution; or
- Sexual battery.[361]

Mandatory Testing upon Victim's Request: A person charged with the above offenses in a case involving the alleged transmission of body fluids will be forced to undergo an HIV and hepatitis testing upon the request of the victim.[362]

Mandatory Testing Before Release from Prison: If the Department of Corrections does not know an inmate's HIV status, the inmate must be tested for HIV prior to release from prison.[363]

Sexual Offenders

People convicted of sexual offenses face some of the most severe collateral consequences possible. For many people these consequences will be for life. The failure to comply with the numerous registration requirements can lead to further prosecution in itself. A person facing a conviction for a registration-eligible offense should be made aware of what sexual offender registration entails.

A conviction for the following offenses will require a person to register as a sex offender:

- Computer pornography, transmission of pornography by electronic device or equipment, transmission of material harmful to minors to a minor by electronic device or equipment;
- Human trafficking;
- Kidnapping, false imprisonment, or luring and enticing a child;
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16, elderly persons, or disabled persons;
- Procuring person under age of 18 for prostitution, selling or buying of minors into sex trafficking or prostitution, or selling or buying of minors;
- Sexual battery;
- Sexual misconduct with an inmate or a person with developmental disabilities or mental illness; Sexual performance by a child;
- Unlawful sexual activity with a minor; or
- Video voyeurism. [364]

Registration and Community Notification

A person who qualifies as a sex offender must register with the sheriff's office in the county where the person resides (either permanently, temporarily, or transiently) within 48 hours of either establishing residency in the state or being released from prison.[365] A sex offender is required to provide law enforcement with his or her identifying information (including social security number, finger prints, palm prints, phone number, vehicle information, and e-mail addresses).[366] A sexual offender must also provide the FDLE with a DNA sample.[367]

Any change in a sexual offender's personal information, including but not limited to residence, name, e-mail address, and vehicle information must be reported to the sheriff.[368] The failure to comply with the registration requirements described in this section is a crime.[369]

Any person who requests information about a sexual offender kept by the Department of Corrections, the FDLE or the county sheriff is entitled to receive it.[370] Any law enforcement agency is permitted to inform the community about a registered sexual offender's presence. If the person has been designated a sexual predator (see below), the community must be notified about the person's presence.

Identification

Within 48 hours of registering with the sheriff, a sexual offender must also obtain a driver's license or identification card from the Department of Highway Safety and Motor Vehicles.[371] This license or identification card will have the marking "sexual offender" printed on it.[372]

If a sex offender's license or identification is subject to renewal, or if the person changes his or her address or name, obtaining new identification is required.[373]

A person petitioning for a name change must disclose to the court whether he or she is required to register as a sexual offender. This is a factor the court will consider in determining whether to grant the request.[374]

Housing and Residency – Generally

A sexual offender must notify the sheriff's office of any change of address. Furthermore, if the person intends to establish residency in another state, he or she must inform the Florida county sheriff of this at least 48 hours before the move.[375] The statewide law enforcement agency of the new jurisdiction where the sexual offenders intends to establish a residency will be notified about the person's intended residency.

Unsurprisingly, homelessness is a major problem for people required to register as sex offenders. Numerous restrictions are placed on where a sexual offender can live. A person convicted of

certain specific sex offenses in which the victim was less than 16 years old is not allowed to live within 1,000 feet of any school, childcare facility, park, or playground.[376] However, a person will not be forced to move if he or she is living in a place that satisfies this requirement and a school, childcare facility, park, or playground is subsequently built within 1,000 feet of the residence.

Many, if not most, sex offenders end up homeless. Homelessness, however, does not exempt a person from sex offender registration requirements. A sexual offender who vacates his or her residence and cannot find a new residence must report to the sheriff's office within 48 hours of leaving the residence.[377] A person is a transient resident of a county must register with the sheriff within 48 hours of establishing a transient residence, and must report to the sheriff every 30 days thereafter.[378]

Housing and Residency – Miami-Dade County

By ordinance, Miami-Dade County has more stringent restrictions on where sexual offenders can live compared to state law. In Miami-Dade, a person who has been convicted or found delinquent of the following offenses cannot live within **2,500** feet of a school:

- sexual battery;
- lewd and lascivious acts on persons under age 16;
- sexual performance by a child;
- sexual acts transmitted over computer;
- selling or buying of minors for portrayal in sexually explicit conduct; or
- a similar law of another jurisdiction where the victim was under 16.

A person is exempted from this restriction if: he or she lived in the residence prior to November of 2005; the school was opened after the person established residence; or if the person was a minor when the sexual offense occurred and received a juvenile sanction.[379]

A person required to register as a sexual offender who lives in a county besides Miami-Dade should consult his or her local ordinances to see if the county, like Miami-Dade, has stricter restrictions than those required by Florida state law.

Additionally, under Miami-Dade County ordinances, a registered sexual offender cannot knowingly be in a municipal park where children under the age of 16 are located, unless the person is a parent of a child who is also at the park.[380]

Employment

Private Employment: A private employer is free to inquire about a person's criminal convictions. A person who is a registered sex offender will almost certainly face difficulties finding a job, especially considering the public nature of sex offender registries.

Public Employment: A sex offender is also ineligible for any state job that requires the person to pass a criminal background investigation.[381] Any state agency or government subdivision considering hiring a person to work or volunteer at any park, playground, daycare center, or other place where children regularly congregate must run a search of that person's name against the sex offender database.[382]

Professional Licenses: When registering with the authorities, a sex offender is required to disclose any professional licenses he or she has.[383] The loss of a professional license will likely result from a conviction for a sex offense. See the Employment section for more details.

Education

A sex offender must report whether he or she is enrolled, employed, or volunteering at any institution of higher education in the state, including on-line courses. The sheriff is required to notify any such institution of the sexual offender's presence.[384]

Relief from Registration Requirements

Ordinarily, a person designated as a sexual offender will be required to register for the rest of his or her life unless the person receives a full pardon or has the conviction set aside.[385] There are two other ways in which a person can be removed from the registration requirement.

A person can file a motion to remove the registration requirement and remove his or information from the state's sexual offender database if:

- The person was convicted (including a withhold) of a lewd and lascivious offense on a person younger than 16, sexual performance by a child, or lewd or lascivious exhibition using a computer;
- The person does not have a prior conviction for the above offenses;
- The only reason the person is required to register as a sexual offender or predator is because of a conviction for one of the above offenses; and
- The person was no more than four years older than the victim, and the victim was between the ages of 13 and 17.[386]

A person can also petition the court for the removal of the registration requirement if:

- 25 years have passed since the person was released from prison or supervision;
- The person has not been arrested for any felony or misdemeanor since release; and
- The person was not required to register due to a conviction for:
    - False imprisonment;
    - Kidnapping;
    - Lewd and lascivious battery if the victim was younger than 12 or if the offense involved force or coercion;

- Lewd and lascivious molestation on a person younger than 12;
- Lewd and lascivious molestation on a person between 12 and 16 if the offense involved the use of force; or
- Sexual battery.[387]

Sexual Predators

Certain convictions or repeat convictions can result in a person being designated as a sexual predator. Convictions for the following offenses will result in a sexual predator designation if the offense was a first degree felony or greater:

- Kidnapping or false imprisonment of a minor if the defendant is not the child's parent or guardian;
- Lewd or lascivious offense committed upon or in the presence of persons younger than 16;
- Selling or buying of minors; or
- Sexual battery.[388]

Repeat convictions for any offense that would require a person to register as a sexual offender will result in that person being designated as a sexual predator, regardless of the degree of the offenses.[389]

A designated sexual predator is subject to registration and public notification requirements similar to the requirements imposed on sexual offenders.[390] Please see the above section on Sexual Offenders above for more information.

Involuntary Civil Commitment of Sexually Violent Predators

In Florida, a person who has been convicted of a sexually violent offense and has been designated as a sexually violent predator can be involuntarily committed following a civil commitment proceeding.

A sexually violent offense includes some of the most serious sexual crimes, but also includes any violent criminal act if it is determined beyond a reasonable doubt that the crime was sexually motivated.[391] In addition to being convicted for a sexually violent offense, to qualify as a sexually violent predator the person must also suffer from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined for long-term treatment.[392]

Prosecutor's Referral for Civil Commitment

A prosecutor *may* refer a person for involuntary civil commitment if he or she:

- Is required to register as a sex offender;

- Has previously been convicted of a sexually violent offense; and
- Has been sentenced to a term of imprisonment in a county or municipal jail for any criminal offense.[393]

A prosecutor *must* refer a person for involuntary civil commitment if he or she:

- Is a sexually violent offender;
- Has been arrested for a criminal offense subsequent to his or her release from custody; and
- The person is subsequently sentenced to a term of imprisonment in a county or municipal jail for any criminal offense.[394]

Practice Tip: Even a misdemeanor conviction can result in civil commitment proceedings being initiated if the sentence includes jail time. A client with a prior history of sexual offenses should be made aware of this when deciding how to proceed in any misdemeanor case.

Civil Commitment Proceedings

Following the recommendation of a multidisciplinary team, the prosecutor will initiate the civil commitment proceedings by filing a petition for involuntary civil commitment in circuit court.[395] What follows is essentially a civil trial with a jury where the state must prove by clear and convincing evidence that the respondent is a sexually violent predator.[396] This requires a unanimous jury verdict.

If the jury finds that the person is a sexually violent predator, following the completion of any prison sentence the person is committed to DCF custody for treatment. The person will remain involuntarily committed until he or she is deemed safe for release.[397]

Civil Commitment

Once committed, a person will have his or her mental condition evaluated by a professional at least once a year. The committed person has a right to petition the court for his or her release on the grounds that he or she is no longer dangerous. Following such a petition, the court will hold a probable cause hearing to determine if it is safe to release the person. If probable cause is found, a trial on whether the person can safely be released will follow.[398]

Unlike a prison sentence, which is primarily meant to punish, the stated aim of involuntary civil commitment is providing treatment to the person and keeping the community safe. While a prison sentence must be definite (either a term of years or life), civil commitment is indefinite and can theoretically go on without a fixed end point for the rest of the person's life.

Appendix A: Professional Licenses

In general, any professional license can be suspended or revoked following a conviction for an offense related to the field in question. §§ 455.227(1)(c), 456.072. The failure to report a qualifying conviction to a licensing board can be grounds for discipline in itself. Certain professional licenses may also require the applicant to prove good character and/or submit to a background check. This is often the case if the profession involves work inside other people's homes, providing healthcare services, or involves work with vulnerable groups.

Licenses Issued by the Department of Business and Professional Regulation

Alcoholic Beverages & Tobacco: Any license related to the sale of alcohol requires the person to be of good moral character. No license can be issued to anyone who has been convicted in the last five years of violating the state Beverage Law, any prostitution related offense, or any drug offense. No license can be issued to anyone who has been convicted of a felony within the last 15 years. West's F.S.A. § 561.15. Additionally, a conviction for battery, perjury, or fraud within the last five years will also disqualify a person from obtaining a liquor license. Fla. Admin. Code r. 61A-1.017.

Architecture & Interior Design: An architect may be denied licensure or disciplined if he or she has been convicted, regardless of adjudication, of any offense that directly relates to the practice of architecture or the ability to practice architecture. § 481.213.

Athlete Agents: The applicant must provide fingers prints for a criminal history records check and prove good moral character. § 468.453

Auctioneers: An auctioneer may be denied licensure or disciplined if he or she has been convicted, regardless of adjudication, of any offense that directly relates to the practice or the ability to practice the profession of auctioneering. If already licensed, the standard penalty is a $1,000 fine and a license suspension. § 468.385, § 468.389; Fla. Admin. Code r. 61G2-7.030.

Boxing, Kick Boxing & Mixed Martial Arts: All boxing relating jobs require a license from the State Athletic Commission (announcer, timekeeper, judge, physician, trainer, manager, promoter, foreign co-promoter, referee, participant, matchmaker, booking agent, representative of a booking agent or concessionaire for any match). A person cannot receive a license if he or she has ever been convicted of violating any provision of Chapter 548 (Florida's boxing laws). Fla. Admin. Code r. 61K1-1.003.

Building Code Administrators & Inspectors: The applicant for a building code inspection license, who has previously been convicted of a felony, will either be denied a license or receive a license on a probationary basis. A licensee convicted of a felony will be fined and will have his or license suspended or revoked. Fla. Admin. Code r. 61G19-5.002.

Certified Public Accounting: The applicant for a license as a certified public accountant must provide proof of good moral character, including a respect for the law. An applicant may be denied a license or a licensee may be disciplined for a conviction for any offense related to public accounting regardless of adjudication. § 473.308; § 473.323.

Community Association Managers: The applicant must provide criminals record for all felonies or misdemeanors where he or she was found guilty, regardless of adjudication or any no contest plea. This includes offenses that were pardoned or where civil rights have been restored, but does not include cases that have been expunged or sealed. Fla. Admin. Code r. 61-20.001.

Construction Contractor: A licensed contractor in the construction industry may be sanctioned if convicted of any offense, regardless of adjudication, which directly relates to the practice of contracting or the ability to practice contracting. § 489.129. The penalties range from a $2,500 to $10,000 fine with a license suspension or revocation. Fla. Admin. Code r. 61G4-17.001.

Electrical Contractors: To be registered with the Electrical Contractors' Licensing Board, an applicant must be a good moral character. This includes showing "a personal history of honesty, fairness, and respect for the rights of others and for state and federal law." § 489.513. An electrical contractor is subject to fines or license revocation if he or she is convicted of any crime that directly relates to the practice of electrical or alarm system contracting or the ability to practice electrical or alarm system contracting. § 489.533.

Employee Leasing Companies: Anyone seeking to form an employee leasing company must apply for a license. The application process requires proof of good moral character, which includes establishing the applicant's respect for "for the laws of this state and nation." The applicant will be subjected to a background check and will have to provide a set of fingerprints.

Most convictions will not automatically disqualify the applicant. The Board will consider the type of crime committed, the crime's relevancy to the employee leasing industry, the length of time since the conviction, and any other relevant factors showing rehabilitation. Convictions that will automatically resulting in a denial of licensure include fraud, perjury, theft or embezzlement of any money or thing of value, sale or use of any controlled substance, tax evasion, or the filing of any false document with any government agency. § 468.525; Fla. Admin. Code r. 61G7-5.001.

Engineers: A licensed engineer may be disciplined upon being convicted of any offense, regardless of adjudication, which directly relates to the practice of engineering or the ability to practice engineering. § 471.033(1)(d). An engineer can also be sanctioned if he or she violates any state law directly regulating the practice of engineering. Fla. Admin. Code r. 61G15-19.001(6)(n). The penalties for a conviction depend on the severity of the offense and range from a fine and a probationary period to license revocation. Fla. Admin. Code r. 61G15-19.004.

Geologists: Like other licensed professions, a licensed geologist may be disciplined following a conviction, regardless of adjudication, that relates to the practice of geology. Penalties range

from a fine to license denial or revocation, even for a first offense. Fla. Admin. Code r. 61G16-9.001.

Home Inspectors: The applicant must show good moral character, which includes a criminal history records check. A person can be denied a home inspector's license if he or she has been convicted, regardless of adjudication, of crime that directly relates to the profession of home inspector. This includes: fraud, theft, burglary, bribery, arson, dealing in stolen property, forgery, uttering a forged instrument, sexual battery, lewd conduct, child or adult abuse, murder, manslaughter, assault, battery, and perjury. Fla. Admin. Code r. 61-30.102.

Landscape Architecture: A licensed landscape architect can face fines or license suspension or revocation following a conviction for any offense that relates to the practice of landscape architecture. Fla. Admin. Code r. 61G10-14.003.

Loan Originator: An applicant must provide a set of electronic fingerprints for a state criminal background check and a traditional set of fingerprints for a federal background check. Fla. Admin. Code r. 69V-40.0312.

Merchant Seaman: Any person interested in applying to be a master, mate, engineer, pilot, operator, or radio officer on a merchant ship must apply for a license. The licensing secretary has the right to review the criminal record of the applicant. 46 USCS §7101 (h)

Mold Remediator & Related Services: An applicant must provide a set of electronic fingerprints, prove good moral character, and undergo a criminal history records. Disqualifying convictions include crimes directly related to the professional responsibilities of a mold remediator or mold assessor. This includes, but is not limited to: fraud, theft, burglary, bribery, arson, dealing in stolen property, forgery, uttering a forged instrument, sexual battery, lewd conduct, child or adult abuse, murder, manslaughter, assault, battery, and perjury. An applicant can also be disqualified based on a pattern of unlawful behavior. Fla. Admin. Code r. 61-31.101.

Real Estate Appraisers: An applicant for a license in real estate appraisal may be denied a license if he or she has been previously found guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction. An applicant may also be denied a license, or a licensee may have his or her license suspended or revoked, following a conviction for a crime involving moral turpitude or fraudulent or dishonest conduct regardless of adjudication. § 475.624.

Talent Agencies: The owner or operator of a talent agency must provide the Department of Business and Professional Regulation with a set of fingerprints and five affidavits of good character. Fla. Admin. Code r. 61-19.003

Veterinary Medicine: A veterinarian can be denied a license or have his or her license revoked upon conviction, regardless of adjudication, of any crime which directly relates to the practice of veterinary medicine or the ability to practice veterinary medicine. This includes any crime that

demonstrates a lack of regard for animal life (e.g., animal cruelty). It also includes any violation of state or federal drug laws. § 474.214(1)(c).

Yacht or Ship Salesperson or Broker: The application form includes fingerprint processing for a background check. Disqualifying convictions include any felony, any misdemeanor constituting a crime of moral turpitude, fraud, theft, dishonesty, assault and battery, or making a false statement. Fla. Admin. Code r. 61B-60.003.

Licenses Issued by the Department of Health

In general, the licensing board for any entity under the supervision of the Florida Department of Health "shall refuse to admit a candidate to any examination" and shall refuse to issue a license to that candidate if he or she has been convicted of any violation of Chapter 409 (social and economic assistance programs), Chapter 817 (fraudulent business practices), or any drug offense, unless the candidate has successfully completed drug court. § 456.0635(2)(a), Fla. Stat. A guilty plea, including a no contest plea, and a withhold of adjudication count as a conviction for purposes of this statute.

However, a person with an otherwise disqualifying conviction can apply for a license if sufficient time has passed (15 years for a first or second degree felony; 10 year for third degree felonies; and 5 years for third degree felony convictions for possession of a controlled substance). § 456.0635(2)(a)(1)-(3), Fla. Stat.

Acupuncture: An acupuncturist can be denied a license or have his or her license suspended for any conviction, regardless of adjudication, related to the practice of acupuncture. The recommended penalty for a licensed acupuncturist is license suspension until rehabilitation is demonstrated. § 457.109; Fla. Admin. Code r. 64B1-9.001.

Athletic Trainer: A licensed athletic trainer can be disciplined for failing to report a conviction for any offense, or for being convicted of any crime related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B33-5.001.

Chiropractor: A person applying to be a licensed chiropractor must provide a set of fingerprints and undergo a criminal background check. § 460.406. A person can be denied a license or can have an existing license suspended or revoked upon conviction for any offense related to chiropractic medicine. § 460.413

Clinical Laboratory Personnel: Licensed lab personnel can be denied a license or disciplined for failing to report a conviction regardless of adjudication for any offense, or for being convicted of any crime involving Medicaid or healthcare fraud, related to the practice position, or involving moral turpitude. Fla. Admin. Code r. 64B3-12.001.

Clinical Social Work, Marriage and Family Therapy & Mental Health Counseling: A person can be denied a license or can have an existing license suspended or revoked for being

convicted, regardless of adjudication, or having entered a plea of no contest to, a crime in any jurisdiction that directly relates to the practice of the licensee's profession or the licensee's ability to practice that profession. §§ 456.072(1)(c) & 491.009(1)(c), F.S.) Fla. Admin. Code r. 64B4-5.001(1)(c).

Dentistry (Dentists and Dental Hygienists): A dentist or dental hygienist can be denied a license or have his or her license suspended or revoked if convicted, regardless of adjudication, of any crime which relates to the practice of dentistry or dental hygiene. A no contest plea creates a rebuttable presumption of guilt to the underlying criminal charges. § 466.028.

Hearing Aid Specialist: A hearing aid specialist can be denied a license or disciplined for failing to report a conviction for any offense, or for being convicted of any crime, related to Medicaid or healthcare fraud or violating any federal regulation regarding hearing aids. § 484.056; Fla. Admin. Code r. 64B6-7.002.

Board of Medicine: A person licensed to practice medicine can be denied a license or have his or her license suspended or revoked and disciplined, including fines, for failing to report a conviction for any offense, or being convicted of any crime, related to Medicaid or healthcare fraud, or a crime directly related to his or her practice or ability to practice. Fla. Admin Code. R. 64B8-8.001(2)(b) & (c) & (4).

Medical Physicist: A medical physicist can be denied a license or disciplined for failing to report a conviction for any offense, or for being convicted of any crime, related to Medicaid or healthcare fraud. The penalties will be greater if any fraud is found to have been intentional. Fla. Admin. Code r. 64B11-4.003.

Nursing: A nurse can be denied a license or have his or her license suspended or revoked and be disciplined, including fines, for failing to report, or for being convicted of any crime, regardless of adjudication, related directly to his or her practice or ability to practice. Fla. Admin. Code r. 64B9-8.006 (1) (c) & (hh).

Nursing Home Administrator: A nursing home administrator can be denied a license or disciplined for failing to report a conviction for any offense, or for being convicted of any crime, related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B10-14.004.

Occupational Therapist: An applicant for a license in occupational therapy must provide proof of good moral character. § 468.209. An occupational therapist can be denied a license or disciplined for failing to report a conviction for any offense, or for being convicted of any crime, related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B11-4.003.

Optician: A licensed optician can be disciplined for failing to report a conviction for any offense, or for being convicted of any crime, related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B12-8.020.

Optometrist: An applicant for a license in optometry must provide proof of good moral character. § 463.006. An applicant can be denied a licensed or disciplined by the Board if licensed following a conviction for any crime related to the practice of optometry. § 463.016.

Orthotists and Prosthetists: A person licensed to perform orthotic or prosthetic fittings can be disciplined for failing to report a conviction, or for being convicted of any crime, related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B14-7.003.

Osteopathic Medicine: A person licensed to practice Osteopathic medicine can be denied a license or have his or license suspended or revoked and be fined, for failing to report a conviction, or for being convicted of any crime, including pleas of no contest, related to his or her practice or ability to practice. Fla. Admin. Code r. 64B15-19.002 (3) & (53).

Pharmacist: A pharmacist can be denied a license or disciplined for failing to report a conviction for any offense, or for being convicted of any crime, involving Medicaid or healthcare fraud, related to the pharmacy practice, involving moral turpitude, or against state drug laws. § 465.016; Fla. Admin. Code r. 64B16-30.001.

Physical Therapist: An applicant for a license in physical therapy must provide proof of good moral character. § 486.031. A licensed physical therapist can be disciplined for failing to report to the Board any conviction, and for being convicted of any offense, related to Medicaid or healthcare fraud. § 486.125; Fla. Admin. Code r. 64B17-7.001.

Podiatrist: An applicant for a license in podiatric medicine with a conviction for an offense related to the practice of podiatric medicine will have his or her application denied. A licensed practitioner will be fined and have his or her license either put on probation, suspended, or revoked. Fla. Admin. Code r. 64B18-14.002.

Psychologist: A person seeking to become a licensed psychologist can be denied a license, or disciplined if already licensed, upon conviction for any offense relating to the practice of psychology. A no contest plea creates a rebuttable presumption of guilt of the underlying criminal charges. The person may present any evidence relevant to the underlying charges and circumstances surrounding the plea. § 490.009.

Respiratory Therapist: A respiratory therapist can be denied a license or disciplined for failing to report a conviction, or for being convicted of any crime, involving felony fraud, Medicare fraud, or any felony drug offense, whether state or federal. However, an applicant will not be denied a license if more than 15 years has elapsed between the end of probation following the conviction and the application. Fla. Admin. Code r. 64B32-5.001.

Speech-Language Pathologist: A licensed speech pathologist can be disciplined for failing to report a conviction, or for being convicted of any crime, related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B20-7.001

Appendix B: Florida Jobs Requiring Background Checks

Numerous jobs in Florida require the applicant to pass a background check. See the Employment section for specific details about what the requirements for Level 1 and Level 2 background check entail.

Some of these jobs are with the state government. Others are in sensitive fields that are regulated by the state. This list is not exhaustive and does not include wholly private positions unregulated by the state. One should also keep in mind that a private employer is allowed to require a background check for any position.

Athletic Coach: An athletic coach who is authorized by any private, nongovernmental entity (excluding private schools) to coach any young athletic team must pass a Level 1 background check. § 943.0438, Fla. Stat. (2018).

Cannabis Dispensing Organization: Under the recently passed "Compassionate use of low-THC cannabis" law, the owner managers of any licensed dispensary under the law must submit to a Level 2 background check. § 381.986, Fla. Stat. (2018).

Child Care Personnel: All employees of a licensed childcare facility must provide proof of good moral character and undergo a Level 2 background check. § 402.305, Fla. Stat. (2018).

Correctional Officer: All employees must submit to a Level 2 background check, have no prior felony convictions, no prior convictions for any misdemeanors involving perjury or false statements, and must provide proof of good moral character. § 943.13, Fla. Stat. (2018).

Department of Children and Families, and Department of Juvenile Justice: All employees of these departments working in programs that service children or youths must undergo a Level 2 background check. § 984.01, Fla. Stat. (2018).

In addition, employees of the Department of Juvenile Justice face background check requirements that are greater than routine Level 2 requirements. In addition to the offenses that disqualify an applicant under a Level 2 background check, a DJJ employee cannot have been convicted, regardless of adjudication, of assault or battery against a law enforcement officer or criminal use of personal identification information. § 985.644, Fla. Stat. (2018).

Direct Service Provider for the Elderly: Any employee of a direct service provider with the Department of Elderly Affairs who provides face-to-face services for clients or has access to client funds, personal property, or living areas must satisfy a Level 2 background check. § 430.0402, Fla. Stat. (2018).

Direct Service Provider for the Developmentally Disabled: Any employee of a direct service provider with the Florida Agency for Persons with Disabilities who provides face-to-face services for a developmentally disabled client or has access to a client's living areas or to a client's funds

or personal property must past a Level 2 background check. However, this requirement does not apply to a service provider who is related to his or her client. § 393.0655, Fla. Stat. (2018).

Direct Service Provider for Children with Mental Illnesses: Any employee of a direct service provider who provides care to children with mental illnesses under the Florida Self-DirectedCare program must undergo a Level 2 background check. § 394.9084, Fla. Stat. (2018).

Division of Blind Services: All employees of the Florida Division of Blind Services must pass a Level 2 background check. § 413.011, Fla. Stat. (2018).

Healthcare Providers: Any person, seeking employment with the following healthcare providers, who gives personal care or services directly to clients or has access to client funds, personal property, or living areas, must pass a Level 2 background check:

- Abortion clinics;
- Adult day care centers.;
- Adult family-care homes;
- Ambulatory surgical centers;
- Assisted living facilities;
- Birth centers;
- Clinical laboratories;
- Companion services or homemaker services providers;
- Crisis stabilization units;
- Health care clinics;
- Health care risk managers;
- Health care services pools;
- Homes for special services;
- Home health agencies;
- Home medical equipment providers;
- Hospitals;
- Hospices;
- Intermediate care facilities for persons with developmental disabilities;
- Laboratories authorized to perform testing under the Drug-Free Workplace Act;
- Mobile surgical facilities;
- Multiphasic health testing centers;
- Nursing homes;
- Nurse registries;
- Organ, tissue, and eye procurement organizations. Prescribed pediatric extended care centers;
- Residential treatment centers for children and adolescents;
- Residential treatment facilities;
- Short-term residential treatment facilities; or

- Transitional living facilities. §§ 408.802, 809, Fla. Stat. (2018).

Hurricane Mitigation Inspector: A hurricane mitigation inspector who works for a wind certified entity in conjunction with the Department of Financial Services must undergo drug testing and a criminal background check. § 215.5586, Fla. Stat. (2018).

Investigator for the Florida High School Athletic Association: An investigator for the FHSAA must pass a Level 2 background check. § 1006.20, Fla. Stat. (2018).

Law Enforcement Officer: All law enforcement officers must submit to a Level 2 background check, have no prior felony convictions, no prior convictions for any misdemeanors involving perjury or false statements, and must provide proof of good moral character. § 943.13, Fla. Stat. (2018).

Mental Health Personnel: All mental health personnel with the Department of Children and Families and the Agency for Health Care Administration must undergo a Level 2 background check. Mental health providers include professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals admitted for mental health treatment. § 394.4572, Fla. Stat. (2018).

Prekindergarten Instructor: Any prekindergarten instructor employed by a public school or by a private prekindergarten provider must provide proof of good moral character and must pass a Level 2 background check. § 1002.55, 63, Fla. Stat. (2018).

Private School Employee: Any private school in Florida participating in the Florida Tax Credit Scholarship Program must require that all employees having direct contact with students pass a Level 2 background check. § 1002.421, Fla. Stat. (2018).

Probation Officer: Must submit to a Level 2 background check, have no prior felony convictions, no prior convictions for any misdemeanors involving perjury or false statements, and must provide proof of good moral character. § 943.13, Fla. Stat. (2018).

School District Employee: Any employee of a district school system or a university lab school must be of good moral character and, if serving in a position that requires direct contact with students, must pass a Level 2 background check. § 1012.32, Fla. Stat. (2018).

School Healthcare Provider: Any person who provides health services to students under a school health services plan must pass a Level 2 background check. § 381.0059, Fla. Stat. (2018).

Substance Abuse Service Provider: Any employee of a substance abuse service provider under the Department of Children and Families, who provides services to children or developmentally disabled adults must pass a Level 2 background check. § 397.451, Fla. Stat. (2018).

Vocational Rehabilitation Service Provider: All employees of any service provider who provides, through the Department of Education's Division of Vocational Rehabilitation, employment services, independent living services, personal assistance services, vocational evaluation or tutorial services, or rehabilitation services to minors and vulnerable adults are subject to a Level 2 background check. § 413.208, Fla. Stat. (2018).

Appendix C: Consolidated Collateral Consequences for Drug Related Convictions

As this manual has shown, there are numerous collateral consequences that specifically result from drug-related convictions. For the sake of convenience, the following is a consolidated summary of every collateral consequence described in the manual that is specifically related to drug convictions.

Section: Benefits

- Disability: If a person has violated his or her state or federal parole or probation he or she is ineligible to receive Supplementary Security Income payments. Eligibility cannot be restored if the offense was drug-related.
- SNAP and TANF, Federal: A person convicted of a felony drug offense is ineligible for SNAP and TANF. It is up to individual states how extensively to enforce that ban. Florida has modified it so that a person is only ineligible for cash and food assistance benefits if he or she has been convicted of drug trafficking.
- Federal Commercial benefits: A person who has been convicted of drug trafficking will lose his or her federal commercial benefits for up to five years after a first conviction, up to 10 years for a second conviction, and permanently after a third or subsequent convictions. A person who has been convicted of possession of a controlled substance can lose their federal commercial benefits for up to one year. For a second or subsequent conviction, he or she will lose all federal commercial benefits for up to five years.

Section: Driving Privileges

- A person who is convicted of possessing, selling, or trafficking a controlled substance, or convicted of conspiracy to commit these offenses, will have his or her driver's license suspended for one year.

Section: Housing Issues

- Section 8 Public Housing Assistance:
    - Any household with a person who the public housing authorities have determined is illegally using a controlled substance can be denied housing assistance. Any household with a person whose pattern of illegal substance or alcohol abuse interferes with the safety or health of other residents may be denied housing assistance.
    - A person who has been evicted from federally funded assisted housing for a drug-related conviction is ineligible to apply for readmission into the program for three years, unless he or she completes a rehabilitation program.
    - Any household or individual who is currently or was recently engaged in drug-related criminal activity may be denied housing assistance.
    - A public housing lease may be terminated for any drug-related criminal activity committed by a tenant, a member of the tenant's household or a guest under the tenant's control. This includes manufacture, sale, distribution, use, or possession of a controlled substance with the intent to manufacture, sell, distribute, or use it.

    - A public housing lease may be terminated for the illegal use of a controlled substance by a tenant or any member of the tenant's household, as well as any pattern of drug use or alcohol abuse that threatens the health or safety of other tenants.
- Florida Urban Homesteading Act: A person will not qualify for this loan program if he or she or his or her spouse has been convicted of a drug-related offense within the last three years.

Section: Employment

- Background Screening: A person who has been found guilty, regardless of adjudication, of the following drug offenses will not pass a Level 1 or 2 security background check:
    - Any felony drug offense or misdemeanor drug offense if a person involved in the crime was a minor.
    - Fraudulent sale of a controlled substance, if a felony.
- State Employment and Professional Licenses: Any person convicted of trafficking or selling a controlled substance is disqualified for positions with any state agency or from obtaining any state issued professional license, unless the applicant has: completed his or her sentence including probation, is enrolled in a drug rehabilitation and treatment program, and submits to periodic drug tests.

Section: Education

- Federal Student Aid: A student who is convicted of any state or federal offense involving possession or sale of a controlled substance where the offense occurred during a period of enrollment for which the student was receiving federal aid, is ineligible to receive federal grants, loans, or work assistance from the date of conviction of possession for one year for the first offense, two years for the second offense, and indefinitely for the third offense. For sale of a controlled substance the student is ineligible for aid for two years for the first offense and indefinitely for the second offense. If the student completes a drug rehabilitation program or if the conviction is set aside or reversed eligibility may be restored.
- Stanley Tate Project Stars Scholarship Program: Any student who receives this scholarship and is convicted of a drug offense will lose the scholarship.

Section: Family Issues

- Placement of a Child: The Department of Children and Families will not place a child with a person, other than their parent, who has been convicted of a felony drug-related offense within the past five years.
- Termination of Parental Rights: The Department of Children and Families, a guardian ad litem, or any person with knowledge of the facts may move to terminate parental rights. One basis for termination is whether the person has an extensive history of alcohol or controlled substance abuse and has refused or failed to complete an available treatment over the last three years in making their determination.

Section: Immigration

- Admission: A conviction for any controlled substance violation can be grounds for the denial of admission to the United States. It is possible to receive a waiver if the only offense was possession of less than 30 grams of marijuana.
- Deportability: A conviction for any drug law, except possession of less than 30 grams of marijuana, can be grounds for deportation.

Section: Firearms, Weapons, and Recreational Licenses

- Concealed Weapons Permit: A person convicted of any drug offense in Florida or in any other state in the last three years is ineligible to receive a concealed weapons permit.

Section: Civic and Civil Rights

- Passport: Any person who has convicted a state or federal felony or misdemeanor drug offense and used a passport or crossed an international border is ineligible for a passport.

Appendix D: Collateral Consequence Guides from Other Jurisdictions

This manual has focused on the collateral consequences for a conviction in Florida. Here are manual prepared by organizations in outside jurisdictions for further reference, all of which can be found online.

California: *Collateral Consequences*, prepared by the Los Angeles County Public Defender's Office, 2011.

Colorado: *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law*, prepared by the Colorado State Public Defenders, 2014.

District of Columbia: *Collateral Consequences of Criminal Records in the District of Columbia: A Guide for Criminal Defense Lawyers*, prepared by the Community Re-entry Program of the Public Defender Service for the District of Columbia, 2010.

Kentucky: *Collateral Consequences of Criminal Convictions in Kentucky*, prepared by the Kentucky Department of Public Advocacy, 2013.

Louisiana: *Now and Later: The Short and Long-Term Consequences of a Louisiana Conviction*, prepared by the Louisiana Justice Coalition, 2011.

New York: *The Consequences of Criminal Proceedings in New York State: A Guide for Criminal Defense Attorneys, Civil Legal Services Attorneys, and Other Reentry Advocates*, prepared by the Bronx Defenders, 2014.

South Carolina: *Collateral Consequences of Criminal Convictions: Dismantling Barriers to Opportunity*, prepared by the South Carolina Appleseed Legal Justice Center, 2012.

Wisconsin: *Civil Consequences of Conviction: The Impact of Criminal Records under Wisconsin Law*, prepared by the Wisconsin State Public Defenders, 2012.

Washington: *Beyond the Conviction*, prepared by the Washington Defender Association, 2013.

Appendix E: For Felony Offenses In Florida– Consequences Of Plea Or Finding Of Guilt

1. When you were arrested, you were fingerprinted and photographed. That information was provided to the Florida Department of Law Enforcement (FDLE) and to the FBI.
2. Your arrest record is not private nor confidential.
3. Depending on the charge, the disposition of your case and your prior criminal history, you may or may not be able to seal your criminal record.
4. You will not be able to wipe clean or erase your arrest record with the FBI because the FBI does not seal or expunge arrest records.
5. A "credit time served" or "CTS" sentence does not mean that your case was dismissed or dropped. To the contrary, it means that you pled guilty or the judge found you guilty.
6. Because criminal history records are public, and many landlords obtain the criminal history records of potential renters, you may not be able to rent or lease a house or apartment.
7. Your arrest record does not disappear or go away just because the judge is withholding adjudication.
8. The judge may require you to give a sample of your DNA for a felony conviction or withhold.
9. You may not be able to live with or visit someone who lives in public or Section 8 housing.
10. You may have your license suspended if you are convicted of a drug charge.
11. You may not be able to serve in the military, depending on type and number of adjudications/convictions. You cannot serve in the military or become a law enforcement officer if adjudicated delinquent or found guilty of domestic violence (misdemeanor or felony).
12. If convicted, you will not be able to obtain State of Florida college financial aid (Bright Futures, Gold Seal Vocational & Academic Scholars).

13. You will not be able to obtain federal student financial aid (grant, loan, or work assistance), for a period of time, if you were convicted of possession or sale of a controlled substance while receiving the financial aid.
14. If convicted, you will not be able to petition to seal/expunge your criminal record.
15. If convicted, you will lose your right to vote, hold public office, be a juror, own or possess a firearm or carry a concealed weapon if you are 18 or older at the time of the conviction. In some cases, once you complete your sentence, some of these rights will be given back to you (restored).
16. You will not be eligible for food stamps if convicted of trafficking drugs.
17. You could face a mandatory prison sentence on future felony charges or a longer jail sentence on misdemeanor or felony charges. A prior felony conviction, including adjudications as a juvenile, may subject you to a longer prison term or a mandatory sentence.
18. You may not be able to obtain employment with:
    - the state or municipality if you were convicted of drug trafficking or convicted of any felony or 1st degree misdemeanor "directly related" to the job;
    - a county or municipality (if the job is critical to security or public safety);
    - law enforcement, correctional or other agency that works with children or elderly;
    - the public school system, a seaport or airport.
19. Your felony conviction may be used against you if you testify, to undermine your credibility.
20. Your photograph may be posted on the Florida Department of Corrections website, if you are sentenced to probation or state prison.
21. You will have your occupational license revoked if convicted of selling drugs.
22. If you have a conviction or withhold for misdemeanor or felony, you may be denied an occupational or business license, e.g., in healthcare profession including certified nurse assistant, licensed practical nurse, EMT and paramedics, registered nurse.

23. If you are not a United States citizen and do not have a green card (as permanent resident), a conviction or withhold of adjudication may prevent you from ever getting a green card. You could be deported, even if you have a green card.
24. If you are undocumented, it does not matter whether you plea guilty or not, you could be removed from the U.S.
25. With few exceptions, you will have to register as a sex offender or sexual predator if convicted of a sex offense. You will not be able to live anywhere you want. Your photograph, name and address will be posted in the Florida Department of Law Enforcement (FDLE) website.
26. If your arrest, conviction or withhold of adjudication is for a sex-related or sexually motivated charge, it can be used against you in the future to keep you locked up for a long time even after you have finished your sentence.

[1] *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010).
[2] ABA Standards for Criminal Justice 4–5.4 (4th ed. 2015) ("The Defense Function").
[3] § 948.01(2), Fla. Stat. (2018).
[4] *See, e.g., Brown v. State*, 787 So. 2d 136 (Fla. 4th DCA 2001).
[5] *Snyder v. State*, 673 So. 2d 9 (Fla. 1996).
[6] § 775.08435(1), Fla. Stat. (2018).
[7] § 316.656(1), Fla. Stat. (2018).
[8] § 943.059, Fla. Stat. (2018).
[9] § 943.0585, Fla. Stat. (2018).
[10] *See, e.g., State v. Heath*, 279 P.3d 458 (Wash. Ct. App. 2012) (treating withholding of adjudication as a conviction for purposes of Washington law); *Kasckarow v. Board of Examiners of Sex Offenders of State*, 936 N.Y.S.2d 498 (N.Y. Sup. Ct. 2011) (withhold a conviction for purposes of New York sex offender registration law).
[11] *See, e.g., United States v. Orellanes*, 809 F.2d 1526 (11th Cir. 1987).
[12] *State v. Jones*, 47 So. 3d 1096 (Ct. App. Louis. 2010) (finding a withhold to a felony in Florida did not render defendant a felon for Lousiana's felon in possession of a firearm statute).
[13] §§ 943.0585(2)(a)(d), 943.059(1)(b)(1), Fla. Stat. (2018).
[14] §§ 943.0585, 943.059, Fla. Stat. (2018).
[15] § 943.0585(2)(a)2., Fla. Stat. (2018).
[16] § 943.0585(4), Fla. Stat. (2018).
[17] § 943.059(4), Fla. Stat. (2018).
[18] § 943.0585(4), Fla. Stat. (2018); § 943.059(4), Fla. Stat. (2018).
[19] § 943.0585(1), § 943.059, Fla. Stat. (2018).
[20] § 943.0585(5), Fla. Stat. (2018).
[21] § 943.0586, Fla. Stat. (2018).
[22] § 943.0586, Fla. Stat. (2018).
[23] Fla. Const. art. IV, §8.
[24] Fla. R. Exe. Cle. 4.
[25] Fla. R. Exe. Cle. 4A.
[26] § 943.0435(11), Fla. Stat. (2018).
[27] Fla. R. Exe. Cle. 4B.
[28] Fla. R. Exe. Cle. 4G.
[29] Fla. R. Exe. Cle. 4F.
[30] Fla. R. Exe. Cle. 9.
[31] Fla. R. Exe. Cle. 10.
[32] Fla. R. Exe. Cle. 6A-B.
[33] Fla. R. Exe. Cle. 10.
[34] Fla. R. Exe. Cle. 12B.
[35] Fla. R. Exe. Cle. 12C.
[36] Fla. R. Exe. Cle. 14.
[37] *Hand v. Scott*, Case No. 4:17cv128-MW/CAS (N.D. Fla. 2018).
[38] 42 U.S.C. § 402(x).
[39] 42 U.S.C. § 1382(e)(4)(A).
[40] 42 U.S.C. § 1382(e)(4)(B).
[41] 42 U.S.C. § 1382(e)(4)(C).
[42] 20 C.F.R. § 404.1506
[43] 42 U.S.C. § 1383(a)(2).
[44] 7 U.S.C. § 2015(k); 42 U.S.C. § 608(a)(9).
[45] 7 U.S.C. § 2015(r).
[46] 21 U.S.C.A. § 862a.

[47] 21 U.S.C.A. § 862a.
[48] § 414.095(1), Fla. Stat. (2018).
[49] http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf
[50] 42 U.S.C.A. § 1320a-7b.
[51] § 409.913(33), Fla. Stat. (2018).
[52] 38 U.S.C. § 1505(a).
[53] 38 U.S.C. § 1505(b).
[54] 38 U.S.C. §§ 6104-05.
[55] 21 U.S.C.A. § 862(d)(2018).
[56] 21 U.S.C.A. § 862(a)(2018).
[57] 21 U.S.C.A. § 862(b)(2018).
[58] 21 U.S.C.A. § 862(c)(2018).
[59] 11 USC §1328 & 11 USCS § 707.
[60] § 443.091, Fla. Stat. (2018).
[61] § 443.101(12), Fla. Stat. (2018).
[62] § 443.101(9)(a), Fla. Stat. (2018).
[63] § 443.101(6), Fla. Stat. (2018).
[64] § 443.101(13), Fla. Stat.(2018).
[65] § 440.09(4)(a), Fla. Stat.(2018).
[66] § 112.3173, Fla. Stat.(2018).
[67] § 28.246(6), Fla. Stat.(2018).
[68] § 322.28(2)(a)(1), Fla. Stat.(2018).
[69] § 322.28(2)(a)(2), Fla. Stat.(2018).
[70] § 322.28(2)(a)(3), Fla. Stat.(2018).
[71] § 322.28(2)(b), Fla. Stat.(2018).
[72] § 322.28(2)(d), Fla. Stat.(2018).
[73] § 322.28(2)(d), Fla. Stat.(2018).
[74] § 322.0261, Fla. Stat. (2018).
[75] § 316.656(1), Fla. Stat. (2018).
[76] § 316.1937(6)(a)-(d), Fla. Stat. (2018).
[77] § 316.1937(5)(a), Fla. Stat. (2018).
[78] § 322.27(5)(a), Fla. Stat. (2018).
[79] § 322.264(1), Fla. Stat.(2018).
[80] § 322.264(2), Fla. Stat.(2018).
[81] § 322.28(3), Fla. Stat. (2018).
[82] § 322.28(4)(a)-(b), Fla. Stat. (2018).
[83] § 322.27(1)(b), Fla. Stat. (2018).
[84] § 322.28(1), Fla. Stat.(2018).
[85] § 322.0261, Fla. Stat.(2018).
[86] § 322.055(1), Fla. Stat. (2018).
[87] *Id.*
[88] *Id.*
[89] *Huesca v. State*, 841 So. 2d 585 (Fla. 2d DCA 2008).
[90] *Lee v. State*, 673 So. 2d 990 (Fla. 4th DCA 1996).
[91] 23 U.S.C.A. § 159(a)-(b) (2018).
[92] *Id.*
[93] § 322.27(6), Fla. Stat. (2018).
[94] *Id.*
[95] § 316.191(3)(a)-(c), Fla. Stat. (2018).
[96] § 322.27(2), Fla. Stat.(2018).
[97] § 320.02(6), Fla. Stat.(2018).

[98] § 322.26(3), Fla. Stat. (2018).
[99] § 322.26(5), Fla. Stat. (2018).
[100] § 322.26(6), Fla. Stat. (2018).
[101] § 322.26(7), Fla. Stat. (2018).
[102] § 322.26(9), Fla. Stat. (2018).
[103] § 322.28(6), Fla. Stat. (2018).
[104] § 322.28(7), Fla. Stat. (2018).
[105] § 322.274(1), Fla. Stat. (2018).
[106] §§ 318.18, 322.245(5)(a), Fla. Stat. (2018).
[107] § 322.245(2), Fla. Stat. (2018).
[108] 42 U.S.C.A. § 666(a)(16) (2018).
[109] § 61.13016(1), Fla. Stat. (2018).
[110] § 322.23(2), Fla. Stat. (2018).
[111] § 322.24, Fla. Stat. (2018).
[112] § 322.271(1)(c), Fla. Stat. (2018).
[113] § 322.271(1)(b), Fla. Stat. (2018).
[114] § 322.271(2), Fla. Stat. (2018).
[115] § 322.271(4)-(7), Fla. Stat. (2018).
[116] 42 U.S.C.A. § 13663(a) (2018).
[117] 42 U.S.C.A. §1437n(f)(1); (only applies to public housing, the Section 8 voucher program, and the Section 8 Moderate Rehabilitation program)
[118] 42 U.S.C.A. § 13661(a) (2018)
[119] 42 U.S.C.A. § 1437a(b)(9); 24 C.F.R. 5.100 (2017) "Drug-related criminal activity" is defined as the illegal manufacture, sale, distribution, or use of a drug or the possession of a drug with intent to manufacture, sell, distribute, or use the drug. "Drug" is defined as a controlled substance as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. § 802.
[120] 24 C.F.R.§5.100 (2018); "Violent criminal activity" is defined as "any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause or be reasonably likely to cause, serious bodily injury or property damage."
[121] 42 U.S.C. § 1437d(*l*); 24 C.F.R. §966.4(f)(12)(i).
[122] 24 C.F.R. §966.4(l)(5)(i)(A).
[123] 24 C.F.R. §966.4(l)(3)(B)(3); 24 C.F.R. §966.4(l)(5)(ii)(B).
[124] HUD Multifamily Lease, Form HUD-90105a, ¶23.
[125] *Id.*
[126] 24. C.F.R. §982.551(l)
[127] 24 C.F.R. §982.553(b)(1)(ii)
[128] § 420.630, Fla. Stat. (2018).
[129] § 420.635, Fla. Stat. (2018).
[130] § 420.633, Fla. Stat. (2018).
[131] § 420.635, Fla. Stat. (2018).
[132] Fla. Admin. Code r. 58A-14.008.
[133] § 723.061(1)(b), Fla. Stat. (2018).
[134] § 760.23, Fla. Stat. (2018).
[135] § 760.29(5)(d), Fla. Stat. (2018).
[136] *See* Federal Executive Order 10450 – Security Requirements for Government Employment, available at: http//archives.gov/federalregister/codification/executive-order/10450.html.
[137] 10 U.S.C. § 504.
[138] *Id.* Similarly, a person is relieved from service under the Selective Service Act if he has been convicted of a crime punishable by more than one year (i.e., a felony). 50 U.S.C. App. § 456(m).
[139] Department of Defense Instruction No. 1304.26, September 20, 2011, available at http://www.dtic.mil/whs/directives/corres/pdf/130426p.pdf.

[140] *Id.* at E2.2.7.
[141] *Id.* at E2.2.7.1
[142] *Id.* at E2.2.7.2.
[143] *Id.* at E2.2.7.2.1
[144] *Id.* at E2.2.7.2.2
[145] 18 U.S.C. § 922(d)(9).
[146] Department of Defense Instruction No. 6400.06, 6.1.4.5.1.5, September 20, 2011, available at http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf.
[147] § 1012.467, Fla. Stat. (2018).
[148] U.S. Equal Employment Opportunity Commission Enforcement Guidelines, *Consideration of Arrest and Conviction Records in Employment Decisions*, April 25, 2012 *available at* http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm
Under Title VII of the Civil Rights Act of 1964
[149] § 112.011(2)(b), Fla. Stat. (2018).
[150] § 112.011(1)(a), Fla. Stat. (2018).
[151] § 112.011(2)(a), (c), Fla. Stat. (2018).
[152] §§ 435.03-04, Fla. Stat. (2018).
[153] § 435.04, Fla. Stat. (2018).
[154] § 110.1127, Fla. Stat. (2018).
[155] § 435.07(1), Fla. Stat. (2018).
[156] § 435.07(3), Fla. Stat. (2018).
[157] § 435.07(4)(b), Fla. Stat. (2018).
[158] Fla. Admin. Code r. 33-601.715(3).
[159] DOC Form DC6-111A, *available at* https://www.flrules.org/gateway/reference.asp?No=Ref-04767.
[160] Fla. Admin. Code r. 33-601.713(10).
[161] Fla. Admin. Code r. 33-601.717(5)(c).
[162] Fla. Admin. Code r. 33-601.717(5)(c)(5).
[163] § 775.16(1)-(2), Fla. Stat. (2018).
[164] Rule 1-14.1 of the Rules of the Supreme Court Relating to Admissions to the Bar (Bar Admissions Rules)
[165] Bar Admission Rule 2-12.
[166] Bar Admission Rule 2-13.3.
[167] Bar Admission Rule 2-13.4
[168] Bar Admission Rule 3-10.1(c)(4).
[169] Bar Admission Rule 3-10.1(c)(5).
[170] Bar Admission Rule 3-11(a).
[171] Bar Admission Rule 3-12.
[172] Bar Admission Rules 3-12-13.
[173] Bar Admission Rule 2-14.
[174] § 744.1012, Fla. Stat. (2018).
[175] § 744.3135, Fla. Stat. (2018).
[176] § 744.309, Fla. Stat. (2018).
[177] § 744.474, Fla. Stat. (2018).
[178] § 39.820, Fla. Stat. (2018).
[179] § 39.821, Fla. Stat. (2018).
[180] § 320.3206, Fla. Stat. (2018).
[181] 20 U.S.C. § 1091(r)(1).
[182] 20 U.S.C. § 1091(r)(2).
[183] 20 U.S.C. § 1070a(b)(6).
[184] § 1009.531(1)(e), Fla. Stat. (2018).
[185] § 1009.984(3), Fla. Stat. (2018).
[186] § 1006.08(2), Fla. Stat. (2018).

[187] § 1003.31(3), Fla. Stat. (2018).
[188] § 1003.31(3), Fla. Stat. (2018).
[189] § 1006.15(3)(a)(4), Fla. Stat. (2018).
[190] § 1006.62, Fla. Stat. (2018).
[191] § 1006.62(3)(a), Fla. Stat. (2018).
[192] § 39.0138(1), Fla. Stat. (2018).
[193] § 39.0138(2), Fla. Stat. (2018).
[194] § 39.0138(3), Fla. Stat. (2018).
[195] § 39.0138(6), Fla. Stat. (2018); Fla. Admin. Code r. 65C-28.011.
[196] § 39.0138(7), Fla. Stat. (2018).
[197] *Id.*
[198] § 39.802(1), Fla. Stat. (2018).
[199] § 39.802(1), Fla. Stat. (2018).
[200] § 39.8055(1)(c), Fla. Stat. (2018).
[201] § 39.806(1)(d)(1), Fla. Stat. (2018).
[202] § 39.806(1)(d)(2), Fla. Stat. (2018).
[203] § 39.806(1)(d)(2), Fla. Stat. (2018).
[204] § 39.806(1)(d)(3), Fla. Stat. (2018).
[205] § 39.806(1)(d)(3)(d), Fla. Stat. (2018).
[206] § 39.806(1)(g), Fla. Stat. (2018).
[207] § 39.806(1)(n), Fla. Stat. (2018).
[208] § 39.806(1)(h), Fla. Stat. (2018).
[209] § 39.806(1)(j), Fla. Stat. (2018).
[210] § 63.089, Fla. Stat. (2018).
[211] § 63.089(3)(e), Fla. Stat. (2018).
[212] § 63.089(4)(b), Fla. Stat. (2018).
[213] § 39.0139(2), Fla. Stat. (2018).
[214] § 39.0139(3), Fla. Stat. (2018).
[215] § 39.0139(4), Fla. Stat. (2018).
[216] § 39.509, Fla. Stat. (2018).
[217] § 39.509(6), Fla. Stat. (2018).
[218] § 61.13(c), Fla. Stat. (2018).
[219] § 61.13(c)(2), Fla. Stat. (2018).
[220] *Id.*
[221] § 61.45(1)(e), Fla. Stat. (2018).
[222] § 61.45(4)(e), Fla. Stat. (2018).
[223] § 61.45(4)(f), Fla. Stat. (2018).
[224] § 63.092(1), Fla. Stat. (2018).
[225] § 63.092(3), Fla. Stat. (2018).
[226] § 63.092(3)(b), Fla. Stat. (2018).
[227] § 63.092(3), Fla. Stat. (2018).
[228] § 741.30, Fla. Stat. (2018).
[229] *Id.*
[230] § 741.30(6)(e), Fla. Stat. (2018).
[231] § 985.04(1)(a), Fla. Stat. (2018).
[232] § 985.04(2)(a), Fla. Stat. (2018).
[233] *See N.J.G. v. State*, 987 So. 2nd 101 (Fla. 5th DCA 2008); § 316.635, Fla. Stat. (2018).
[234] § 943.0515, Fla. Stat. (2018).
[235] *Id.*
[236] *Id.*
[237] § 943.0515(2)(a), Fla. Stat. (2018).

[238] § 985.12, Fla. Stat. (2018).
[239] § 985.557(2), Fla. Stat. (2018).
[240] § 958.04(1), Fla. Stat. (2018).
[241] Fla. Stat. § 958.04(2) (2018).
[242] Fla. Stat. § 921.0026(2)(l) (2018).
[243] *See State v. Blackburn*, 965 So. 2d 231 (Fla. 4th DCA 2007).
[244] *Goelz v. State*, 937 So. 2d 1237 (Fla. 4th DCA 2006)
[245] § 958.14, Fla. Stat. (2018).
[246] § 1006.13(1), Fla. Stat. (2018).
[247] § 1006.13(3), Fla. Stat. (2018).
[248] § 1006.13(5), Fla. Stat. (2018).
[249] § 1006.13(6), Fla. Stat. (2018).
[250] § 985.04(4)(a), Fla. Stat. (2018).
[251] § 985.04(4)(b), Fla. Stat. (2018).
[252] *See N.J.G. v. State*, 987 So. 2d 101 (Fla. 5th DCA 2008).
[253] § 790.22(5)(a), Fla. Stat. (2018).
[254] § 790.22(5)(b), Fla. Stat. (2018).
[255] § 812.0155, Fla. Stat. (2018).
[256] § 322.056, Fla. Stat. (2018).
[257] § 790.22(6), Fla. Stat. (2018).
[258] § 790.169, Fla. Stat. (2018).
[259] § 790.23(1)(b), Fla. Stat. (2018).
[260] § 943.0435(1), Fla. Stat. (2018).
[261] § 985.475(1), Fla. Stat. (2018).
[262] § 985.441(1)(c), Fla. Stat. (2018).
[263] § 985.475(2), Fla. Stat. (2018).
[264] § 985.04(4)(d), Fla. Stat. (2018).
[265] § 985.48(6), Fla. Stat. (2018).
[266] § 985.481(2), Fla. Stat. (2018).
[267] *Padilla v. Kentucky*, 559 U.S. 356 (2010).
[268] *See, e.g., Chong v. INS*, 890 F.2d 284, 284–85 (11th Cir.1989).
[269] 8 U.S.C.A. § 1182
[270] 8 U.S.C. §§ 1101, 1227.
[271] § 932.703(1)(a), Fla. Stat. (2018).
[272] § 932.704(2), Fla. Stat. (2018).
[273] § 932.701(2)(a), Fla. Stat. (2018).
[274] § 932.702, Fla. Stat. (2018).
[275] § 932.703(4), Fla. Stat. (2018).
[276] § 932.703(1)(a), Fla. Stat. (2018).
[277] § 932.703(1)(c)-(d), Fla. Stat. (2018).
[278] § 932.703(6)(a), Fla. Stat. (2018).
[279] § 932.703(2)(a), Fla. Stat. (2018).
[280] § 932.701(2)(f), Fla. Stat. (2018).
[281] § 932.704(11)(b), Fla. Stat. (2018).
[282] § 932.703(2)(b), Fla. Stat. (2018).
[283] § 932.703(6)(c), Fla. Stat. (2018).
[284] § 932.704(8), Fla. Stat. (2018).
[285] § 932.704(9), Fla. Stat. (2018).
[286] § 790.08(1), Fla. Stat. (2018).
[287] § 790.08(2), Fla. Stat. (2018).
[288] § 790.08(3), Fla. Stat. (2018).

[289] § 849.12, Fla. Stat. (2018).
[290] § 895.03, Fla. Stat. (2018).
[291] § 895.05(1)(b), Fla. Stat. (2018).
[292] § 895.05(2)(a), Fla. Stat. (2018).
[293] § 379.341, Fla. Stat. (2018).
[294] § 379.337, Fla. Stat. (2018).
[295] § 568.10, Fla. Stat. (2018).
[296] Fla. Const. Art. I, § 14.
[297] Rule 3.131(b)(3)
[298] § 907.041(4)(c)(5), Fla. Stat. (2018).
[299] § 907.041(4)(c)(4), Fla. Stat. (2018).
[300] § 907.041(4)(c)(6), Fla. Stat. (2018).
[301] § 948.08(2), Fla. Stat. (2018).
[302] § 948.08(7)(c), Fla. Stat. (2018).
[303] § 948.08(2), Fla. Stat. (2018).
[304] § 948.08(6)(a), Fla. Stat. (2018).
[305] § 910.035(5), Fla. Stat. (2018).
[306] *Lafler v. Cooper*, --- U.S. ---, 132 S.Ct. 1376, 1381 (2012).
[307] § 960.001(1)(g), Fla. Stat. (2018).
[308] § 90.610, Fla. Stat. (2018). The rules of evidence in the federal system and in most other states similarly allow for impeachment by prior convictions.
[309] § 784.03, Fla. Stat. (2018).
[310] § 812.014(3)(b), Fla. Stat. (2018).
[311] § 316.193(2)(b)(3), Fla. Stat. (2018).
[312] § 322.34(2)(c), Fla. Stat. (2018).
[313] § 414.39(2)(c), Fla. Stat. (2018).
[314] § 741.31, Fla. Stat. (2018).
[315] § 836.12, Fla. Stat. (2018).
[316] § 796.07, Fla. Stat. (2018).
[317] § 784.049, Fla. Stat. (2018).
[318] § 825.1036(4)(b), Fla. Stat. (2018).
[319] § 775.084(1)(a), Fla. Stat. (2018).
[320] § 775.084(1)(b), Fla. Stat. (2018).
[321] § 775.084(1)(c), Fla. Stat. (2018).
[322] § 775.084(1)(d), Fla. Stat. (2018).
[323] § 775.082(9)(a), Fla. Stat. (2018).
[324] § 921.0024, Fla. Stat. (2017).
[325] *Montgomery v. State*, 897 So. 2d 1282 (Fla. 2005).
[326] Fla. R. Crim. P. Rule 3.691(a).
[327] *Cox v. State*, 416 So. 2d 511 (Fla. 5th DCA 1982).
[328] § 775.13, Fla. Stat. (2018).
[329] § 775.13(3)(c), Fla. Stat. (2018).
[330] 18 U.S.C. § 922(g).
[331] § 70.23, Fla. Stat. (2018).
[332] § 790.065(1)-(2), Fla. Stat. (2018).
[333] § 70.235, Fla. Stat. (2018).
[334] § 112.011(1)(c), Fla. Stat. (2018).
[335] § 790.01(1)-(3), Fla. Stat. (2018).
[336] § 790.06(1), Fla. Stat. (2018).
[337] § 790.06(2)(d), Fla. Stat. (2018).
[338] § 790.06(2)(e), Fla. Stat. (2018).

[339] § 790.06(2)(f), Fla. Stat. (2018).
[340] § 790.06(2)(k), Fla. Stat. (2018).
[341] § 790.06(10), Fla. Stat. (2018).
[342] § 790.401, Fla. Stat. (2018).
[343] § 775.0846, Fla. Stat. (2018).
[344] § 327.731, Fla. Stat. (2018).
[345] § 379.3503, Fla. Stat. (2018).
[346] Fla. Const. Art. VI, § 4(a).
[347] Fla. Const. Art. VI, § 4(a).
[348] 28 U.S.C. § 1865(b)(5).
[349] § 40.013, Fla. Stat. (2018); *see also* Fla. R. Civ. P. Form 1.983.
[350] Fla. R. Crim. P. Form 3.9855.
[351] 22 U.S.C. § 2714.
[352] § 68.07, Fla. Stat. (2018).
[353] § 943.325(1), Fla. Stat. (2018).
[354] § 943.325(7), Fla. Stat. (2018).
[355] § 943.325(2), Fla. Stat. (2018).
[356] § 943.325(12), Fla. Stat. (2018).
[357] § 943.325(8), Fla. Stat. (2018).
[358] § 943.325(15), Fla. Stat. (2018).
[359] § 943.325(16), Fla. Stat. (2018).
[360] FDLE Rule 11D-6.003(2).
[361] § 775.0877(1)(a)-(o), Fla. Stat. (2018).
[362] § 960.003, Fla. Stat. (2018).
[363] § 945.355, Fla. Stat. (2018).
[364] § 943.0435, Fla. Stat. (2018).
[365] § 943.0435(2)(a), Fla. Stat. (2018).
[366] § 943.0435(2)(b), Fla. Stat. (2018).
[367] Fla. Admin. Code r. 11D-6.003
[368] § 943.0435(2)(a), Fla. Stat. (2018).
[369] § 943.0435(9), Fla. Stat. (2018).
[370] § 944.606(3)(b)-(d), Fla. Stat. (2018).
[371] § 943.0435(3), Fla. Stat. (2018).
[372] § 322.141(3), Fla. Stat. (2018).
[373] § 322.141(4), Fla. Stat. (2018).
[374] § 68.07, Fla. Stat. (2018).
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[377] § 943.0435(4)(b), Fla. Stat. (2018).
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[379] Art. XVII Miami-Dade Code of Ordinances, The Lauren Book Child Safety Ordinance, Section 21-277.
[380] Miami-Dade Code of Ordinances, Section 21-284.
[381] § 435.07(4)(b), Fla. Stat. (2018).
[382] § 943.04351, Fla. Stat. (2018).
[383] § 943.0435(2)(b), Fla. Stat. (2018).
[384] § 943.0435(2)(b)(2), Fla. Stat. (2018).
[385] § 943.0435(11), Fla. Stat. (2018).
[386] § 943.04354(11), Fla. Stat. (2018).
[387] § 943.0435(11)(a), Fla. Stat. (2018).
[388] § 775.21(4)(a)(1)(a), Fla. Stat. (2018).
[389] § 775.21(4)(a)(1)(b), Fla. Stat. (2018).

[390] § 775.21(6)-(7), Fla. Stat. (2018).
[391] § 394.912(9), Fla. Stat. (2018).
[392] § 394.912(10), Fla. Stat. (2018).
[393] § 394.9125(2), Fla. Stat. (2018).
[394] § 394.9125(1), Fla. Stat. (2018).
[395] § 394.914(1), Fla. Stat. (2018).
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[397] § 394.917(2), Fla. Stat. (2018).
[398] § 394.918, Fla. Stat. (2018).

Mark Stephens

Former Elected Public, Knox County, TN

Mark Stephens served as the elected Public Defender for the Sixth Judicial District (Knoxville) for 29 years. He left that position on November 1, 2019 to return to private practice and to work to promote The Justice Initiative, a non-profit Mr. Stephens founded in 2015.

Mark Stephens was licensed to practice law in April, 1980. He practiced law in the private sector for nearly 10 years before committing to public defense services. He dedicated his career to building the Knox County Public Defender's Community Law Office into a national model of holistic, client-centered representation. He has served as President of the Tennessee District Public Defender's Conference and Chair of the Tennessee Supreme Court's Indigent Defense Commission. In addition, he served for two years as Chair of the National Association for Public Defense and currently serves on the Steering, Executive, Systems Builders and Workloads Committees of that organization.

Mr. Stephens served for eight years as a member of the Board of Directors for Gideon's Promise. In 2011, Gideon's Promise presented him with the Stephen B. Bright Award in recognition of his contribution to the effort to improve the quality of indigent defense in the South. He is a member of the American Bar Association (ABA) and the National Association of Criminal Defense Lawyers (NACDL).

On the state level, Mr. Stephens is a member of the Tennessee Association of Criminal Defense Lawyers (TACDL), which twice awarded him the prestigious Robert W. Ritchie Award (2000 and 2007). He is a member of the Tennessee Bar Association.

On a local level, Mr. Stephens is a member of the Knoxville Bar Association, which in 1995 presented him with the Law and Liberty Award for his efforts in the advancement and protection of law and liberty. In 2002, Mr. Stephens was presented with the UT Pro Bono award for outstanding contributions to the Innocence Project. In 2016, Mr. Stephens was awarded the Governor's Award by the KBA for his work in developing the Community Law Office. In 2017 he was selected to become a Fellow of the Knoxville Bar Foundation.

Since 2004, Mr. Stephens has served as an Adjunct Professor of Law at the University Of Tennessee College Of Law, where he teaches Trial Advocacy. In 2017, Stephens was named the Outstanding Adjunct Faculty Member by the Law School.

In 2019, Mr. Stephens was selected to become a Fellow in the American College of Trial Lawyers.

A Holistic, Client Centered Representation Model.
The ideal model for the 21st century Public Defender Office

People who enjoy stability in their lives, including the benefit of a loving supportive family, a good job, a skill set that allows them to compete in today's market place, long-term shelter, and good mental health, seldom wake up one day and decide to commit a crime. Conversely, people experiencing chaos and dysfunction in their lives, including a lack of familial support, unemployment, an insufficient skill set to compete for a good job, a lack of long-term shelter, suffering from various mental health issues and/or addiction, may convince themselves that the only way to survive another week, yes, even another day, is to engage in criminal behavior.

Hello, my name is Mark Stephens and I am honored to have an opportunity to address the Presidential Commission on Law Enforcement and the Administration of Justice.

I have been practicing law for a little over 40 years. The last thirty (30) of those I had the honor to serve as the elected Public Defender for the Sixth Judicial District of Tennessee (Knoxville, Tennessee). And as Knox County's Public Defender, I watched my staff represent approximately ten thousand (10,000) clients each year - three hundred thousand (300,000) clients over the course of my career, who, for the most part, were living in the most challenging of circumstances, before they were charged with a crime. To many of our clients, the chaotic conditions that was their life, relegated the crime for which they were charged and the potential loss of their liberty, from their personal top ten most pressing problems list.

Approximately 72% of all arrests in a year in Knoxville are for misdemeanor offenses. As you know, misdemeanor offenses carry less than one (1) year in jail. Sadly, most public defender clients cycle in and out of our local jails, exacerbating the dysfunction that is their life, and at great expense to taxpayers.

Early in my public defender career I realized that the legal challenges facing most of my clients were of a nature that I could handle with relative ease, and if I couldn't, a short time on the job quickly made me an 'expert.' But what I also realized, was that if I don't address the underlying dynamics that are negatively affecting my client's behaviors, I'll get to address those same legal challenges over and over again. A public defender quickly learns that there will be no behavior modification without effectively addressing the underlying dynamics driving that behavior.

Consequently, the men and women at the Knox County Public Defender's Community Law Office (CLO) adopted a representation model they refer to as "holistic, client-centered, legal representation." This model advocates for a fair and just process within the criminal justice system, increase self-sufficiency and integration of clients into the community, and positively impact the quality of life in Knox County.

To be sure, this is a unique representation model for a public defender office operating within the confines of a statewide delivery system. This model is driven by the premise that most of the criminal behavior in our community is symptomatic of the personal, psychological and social dynamics that have coalesced in the life of an individual resulting in that person engaging in criminal activity. And if that premise is accurate, a representation model that only provides legal

representation, while ignoring the debilitating impact of poverty, and the other social and psychological dynamics on the lives of the people we represent, will not bring about positive, long-term, solutions for our clients. While a disposition of the client's criminal case might afford a client a temporary opportunity out of the criminal justice system, the "traditional public defense model" fails to provide the client the needed blueprint and skill-set to remain out of custody. When the socio-economic and psychological factors that contributed to the client engaging in the behaviors that resulted in him being in the criminal justice system in the first instance, continue to exist, recidivism studies consistently show that around two-thirds of the individuals who come into the criminal justice system return.

The CLO's client-centered, holistic model is innovative, comprehensive, and timely as jail and prison populations continue to grow at alarming rates. The CLO's model assures the individual client that his constitutional right to counsel will be protected by a zealous advocate, highly skilled at addressing his legal case, but who also cares about the client's ability to remain out of the criminal justice system.

The CLO model embraces an interdisciplinary team approach that not only addresses the legal needs of the client's case, but also addresses the needs of the whole person. This innovative model seeks justice, while preventing crime, reducing recidivism, and empowering clients to become productive members of their community.

As indicated earlier, clients represented by the CLO, often are struggling with multiple personal and structural factors – homelessness, mental illness, substance addiction, unemployment, family crisis, and lack of support systems. Usually the common thread that prevents effectively dealing with these conditions is poverty. Incarceration and poverty are intertwined. Poverty increases the risk of incarceration and, conversely, incarceration fuels poverty. The two form a vicious cycle. In addition to the human cost there is a considerable financial drain as the incarceration rate in Knox County, Tennessee has almost quintupled since the early 1970's. It is not unheard of for states and communities to spend as much on incarceration as is spent on education. More African/American males are on probation or in prison than college.

Justice is a process as well as an outcome. For the public defender lawyer, efforts to achieve justice for the client can be undermined by the clients' circumstances as well as the attorney's ability to engage the client. Clients living in poverty often internalize a sense of alienation and exclusion that often manifests itself as hopelessness, desperation, frustration, powerlessness, anxiety, or depression. When public defender services are delivered in run-down, undersized, poorly maintained physical settings by attorneys with overwhelming caseloads, that sense of alienation, exclusion, and lack of worth is reinforced by the client's own lawyer. This phenomenon is further complicated by the perception that public defenders are not as good as "paid lawyers" or lack the ability, commitment, and loyalty to effectively represent them. Public defenders, who are forced to handle too many cases in a single court appearance, juggling contacts and questions from clients, client's family, police, witnesses, clerks, prosecutors, and probation officers, often appear overwhelmed. Judges' interaction with public defenders, including displays of impatience, lack of tolerance, disrespect, or worse, treating public defender clients differently than other clients can further interfere with the lawyer's ability to effectively engage the client.

The public defender who views the role of legal representative as authoritarian (as opposed to authoritative) and devalues clients' opinions and feelings, can reinforce the sense of powerlessness and alienation. While the client may seem willing to “do whatever it takes to get out,” the opportunity to encourage the client to be proactive and develop greater self-sufficiency is lost.

Against this reality, the Knox County Public Defender's Community Law Office practices "client-centered, holistic, representation."

“Client-centered” representation emphasizes collaboration between client and attorney. It means that the lawyer respects the client’s right to ultimately control the outcome of his or her case. The client-centered lawyer affords the client the power, ability and the right to decide what direction he wants his case to take, after being given the information and council he needs. The lawyer conveys empathy and respect, understanding the client’s situation from the client’s point of view, thoroughly investigating the facts, circumstances, and law involved in the case, offering the best legal advice the lawyer can offer with regard to the course she believes the client should pursue, but ultimately respecting the client’s right to choose the ultimate course of his case. It encourages more proactive, critical thinking by the client, while reinforcing the client’s innate worth without condoning negative behavior.

"Holistic representation" embodies the belief that addressing only our client's criminal behavior, and not the consequences of poverty and other risk factors that lead to criminal activity, is shortsighted. "Holistic representation" can be characterized as an ecological perspective, recognizing the interaction of legal representation with factors ranging from individual conditions to socio-economic structure and environmental circumstances. At the CLO, holistic representation includes, at a minimum, lawyers partnering with social service providers to address both the legal issues confronting the client, and those other factors that are barriers to the clients functioning in the community and achieving life goals. Collaboratively, the individual's legal problems as well as personal and environmental issues are addressed, a plan of action is developed, and together, they begin the process of implementing that plan. A social service director, full time MSW social workers, and social work student externs at the CLO provide seamless access to needed services, assisting lawyers and clients in reaching their goals.

The attached table lists activity types offered by social workers at the CLO[1]

Clients with resources retain lawyers, confident that the lawyer they chose possesses the expertise, ability, and influence to bring the case to a resolution the client will accept and embrace. The client's faith in the ability of the lawyer he retains is foundational to the health of the relationship. "Lawyer-centered" lawyering, in the context of retained criminal defense representation, is accepted, even desired. However, in the world of public defense, the client doesn't select his lawyer. The judge, whom the client distrusts and even fears, "appoints" the client his legal counsel. The client has no choice in who represents him. The client has no knowledge regarding the competence of his legal counsel. Consequently, he has no reason to be confident in the expertise, ability, or influence of his appointed lawyer. In fact, too often, what

[1] See Exhibit A attached.

the client witnesses (i.e., poorly maintained office, high caseloads, chaos during court appearances, difficulty contemporaneously remembering critical facts, client history and witnesses) suggests that the client has good reason to lack confidence in his appointed lawyer. Unlike the retained lawyer, trust is supplanted by distrust as the foundational underpinning of the client/public defender relationship.

For those court-appointed lawyers who, in the context of public defense, practice "lawyer-centered" lawyering; who believe they alone know what is best for their client and their client's case, telling their clients how they should resolve their cases, or, often in a patronizing or condescending manner, strongly dictating the "right" choice to clients, that approach often fails. The distrust the client feels in his attorney creates a lack of confidence and often an unwillingness to accept his advice.

In the public defense context, client-centered lawyers start building their client's trust from the first meeting. Client-centered lawyering values self-determination as well as validating the client as a person of worth. Rather than insisting that the client follow their advice, client-centered lawyers spend time and energy thinking and re-thinking their advice – within the context of the client's situation – and if still convinced they are offering their clients the best advice, develop strategies for helping clients understand and accept their perspective, and why the client should act on the advice of counsel. Ultimately, a client-centered lawyer accepts the client's decision as to how his or her case will be resolved, and that decision is met with respect, courtesy, cooperation, and support from the lawyer.

There is a fundamental difference in approach between the "traditional" public defender office model and the "holistic," "client-centered" public defender office model[2]

To be sure, client-centered representation is more difficult for public defenders. Building trust takes time. The public defender builds trust by diligent and disciplined work and by showing the client respect. Because public defender caseloads are high, public defenders struggle to find the necessary time to build trust in their relationship with their client.

The CLO model from its inception has reflected what The Center for Holistic Defense identifies as: The Four Pillars of Holistic Defense[3]:

1. **Seamless access to services that meet client's legal and support needs.** CLO attorneys, social workers, and support staff are committed to comprehensive assessment and action plans. From the first contact while incarcerated to entering the CLO lobby, clients are made aware of available services. Staff are mindful of the fact that successful referral requires skill beyond simply informing the client. Connecting techniques, including calls to the agency, client preparation, introductions and follow-up are routinely practiced.

2. **Dynamic, interdisciplinary communication.** The CLO uses a team vertical representation model that includes, attorneys, social workers, investigators, IT, and

[2] See Exhibit B attached.

[3] See Exhibit C, https://www.bronxdefenders.org/the-four-pillars-of-holistic-defense/

support staff. Dynamic communication occurs in team meetings, through a fully integrated, and remotely accessible, electronic case management system, and frequently, in day to day case discussions and exchanges about defense strategies, alternative sentencing plans, legal issues and challenges, or other exchange of ideas and information.

3. **Advocate with an interdisciplinary skill set.** The concept of the Community Law Office incorporates an integration of legal and social services, as opposed to working in a parallel fashion leading to comprehensive, integrated services. Early in its history, the CLO offered workshops focused on understanding mental illness and working with different type personalities. In addition, concepts of motivational interviewing have been taught by social workers at the CLO. Likewise, lawyers teach the social workers about legal systems and structures. Social workers participate in CLO staff meetings. All new employees whether attorneys or social workers attend orientation sessions to learn about the respective services.

4. **A robust understanding of and connection to the community served.** The CLO recognizes that the successful implementation of their holistic representation model requires access to resources beyond what any public defender office or criminal justice system could provide. The CLO maintains that criminal justice is a community responsibility. The more the community understands and involves itself with efforts to understand the people in the system, the better the community will be equipped to positively impact those people. Increased community awareness and support results in greater opportunities for our clients.

Having implemented solid internal legal and social services, the CLO focuses on developing community support to access community resources. Feedback from clients and staff members indicates that client needs have increased, but the availability and accessibility of community resources has not kept up with demand. The lack of community resources essential to client survival (e.g., housing, education, and employment) prevent CLO clients from being able to address other interpersonal dilemmas. Clients often report that they are stigmatized and prevented from successfully re-entering society due to discrimination based on criminal history and convictions. By developing increased community support of our efforts, the CLO hopes to foster resource availability and community awareness, as well as prevention programs for these segments of the community at risk of becoming involved in the criminal justice system.

Consequently, the CLO maintains active, vibrant relationships with many segments of the community. Examples include:

(a) The CLO hosts the biennial study of area homelessness conducted by the Knoxville-Knox County Coalition for Homelessness. Attorneys and social workers participate as interviewers and the Coalition Executive Committee meets monthly at the CLO.

(b) The CLO offers after school and summer programs that extend throughout the year for at-risk youth including the Arts Academy; The Zone; and, Summer at the CLO. School age children from area neighborhoods and children of clients attend these after school programs. Community agencies including the Knoxville Jazz Orchestra, West High

School girls' soccer team, area coaches, the Knoxville Zoo, the Knoxville Symphony Orchestra, the East Tennessee Children's Dance Assemble, Ijams Nature Center, High Energy Theater Arts program, HABIT Read-to-a-Dog program, The Joy of Music, numerous local chefs, musicians, writers, and artists perform and present programs for the children throughout the year. In addition, the University of Tennessee Athletic Department participates by sending athletes to the Summer at the CLO (e.g., All-American football player Eric Berry, and basketball player Melvin Goins and other athletic stars from the University of Tennessee). University of Tennessee head basketball coach Cuonzo Martin conducted a free basketball clinic for participating children.

Other initiatives include:

- Hosting a national Gideon symposium kicking off the creation of the CLO;
- Project Homeless Connect (now the Veterans and Homeless Initiative);
- Latina Feria (staged in conjunction with Leadership Knoxville) families, many of whom are Hispanic, gather for food, music, crafts, games and fun, but also access legal information;
- Saturday Bar (offering free legal advice on a wide range of topics);
- University of Tennessee Law School Extern Program;
- University of Tennessee Social Work Extern program;
- Spring Break Law School Community Service program (University of Chicago);
- Social Workers Ethics Seminar;
- Hosting the Department of Children's Services gatherings at the CLO;
- Hosting East Tennessee Foundation meetings and serving on their grants review panels.
- Inmate book drive for Inmates in our local penal facility collected over 5,000 titles in the first three years.
- Hosting an annual workshop for over 100 area social workers focusing on professional ethics. In addition to offering useful content, the workshop serves to bring practitioners into the CLO, increasing their understanding of the organization and the vital function it serves.
- Homeless Veterans and Civilian Legal Assistance Initiative. This collaborative effort of the CLO, District Attorney General's Office, Legal Aid of East Tennessee, and University of Tennessee Legal Clinic is conducted quarterly at the CLO. It is based on the recognition that many homeless individuals have legal barriers (e.g. unpaid fines, court costs, expunctions) that prevent housing, employment, and self-sufficiency. Participants accompanied by their case manager, present a case plan that is discussed with the attorneys from the CLO and DA and a CLO social worker. A recommendation is then submitted to the appropriate judge requesting legal relief. A formal evaluation is being conducted to assess the effectiveness of the initiative in enabling persons to escape homelessness;
- Expunction Initiative - the CLO has initiated an expunction initiative where we secure thousands of expunctions annually to help minimize the devastating barriers of an arrest or conviction;
- Driver's License Initiative - The CLO offers significant assistance maneuvering the bureaucracy helping clients regained their driver's license allowing them an opportunity to drive to work, school, etc.

First Lady Laura Bush, Senator Lamar Alexander, and Congressman James, "Jimmy" Duncan have visited the CLO, witnessing first-hand the youth programs in action. In addition, Public Defender leaders from Georgia, Kentucky, Virginia, Alabama, Louisiana, North Carolina, Ohio, as well as rural Tennessee offices have visited the CLO. These visits have provided opportunities to share the model, discuss client-centered, holistic representation, and explore ways of implementing the model in rural counties with fewer services.

Resolution: Most Public Defender Offices would implement a client-centered, holistic representation model were funds available. However, deficient state funding has proven to be an impediment. Consequently, federal funding should be made available to states in order to supplement current public defender budgets allowing public defender offices across the country to implement a client-centered, holistic representation model; a proven, cost effective and crime reducing strategy.

SERVICES PROVIDED

Administrative
Community Resource Assistance
Substance Abuse Assistance
Alternative Sentencing
Assessment/Screening
Comprehensive Psychosocial Evaluation
Crisis Intervention/Stabilization
Drivers License Assistance
Education/Employment Assistance
Follow-Up
Housing Assistance
Mental Health Assistance
Mitigation
Therapeutic Intervention
Family Support
Release Planning
Attorney Contact

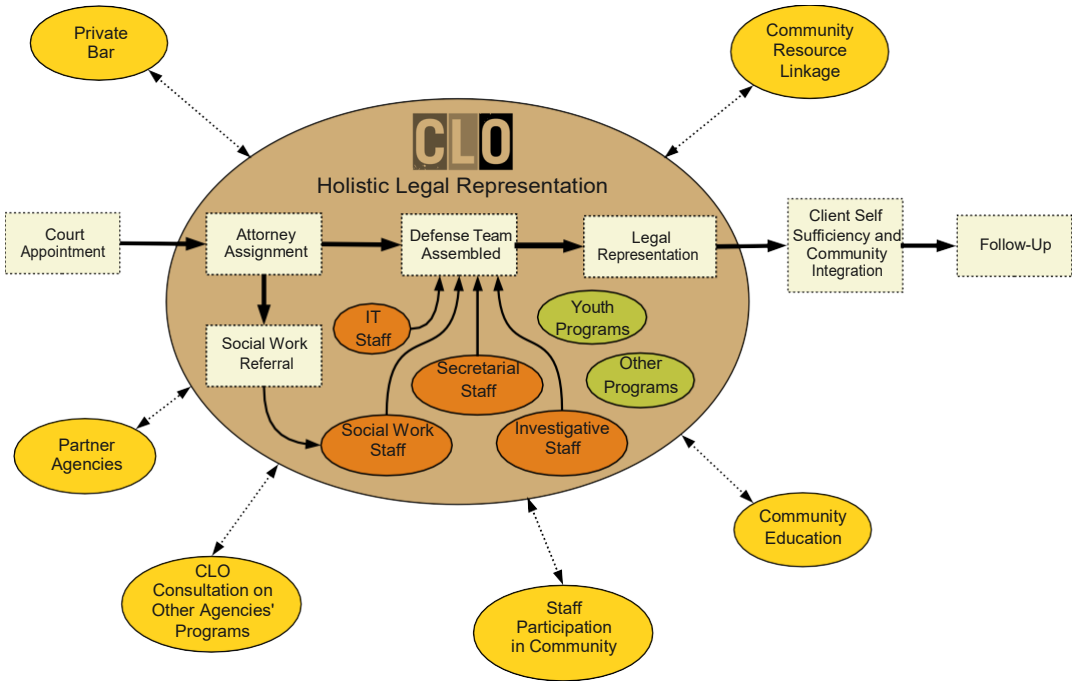
EXHIBIT A

REPRESENTATION MODELS

	TRADITIONAL MODEL	CLIENT CENTERED, HOLISTIC MODEL
Scope of issues addressed	Narrow; legal issues only	Broad; including socio-economic and psychological factors
Relationship	Authoritarian	Authoritative
Attorney role	Active	Active
Client role	Passive	Active
Communication	Unidirectional	Multidirectional
Structure	Formal	Democratic
Decision making	Attorney	Client and attorney

EXHIBIT B

CLO Ecomap


Private Bar
Community Resource Linkage
CLO
Holistic Legal Representation
Court Appointment
Attorney Assignment
Defense Team Assembled
Legal Representation
Client Self Sufficiency and Community Integration
Follow-Up
Social Work Referral
IT Staff
Youth Programs
Secretarial Staff
Other Programs
Social Work Staff
Investigative Staff
Partner Agencies
Community Education
CLO Consultation on Other Agencies' Programs
Staff Participation in Community