Intimately Related to the Criminal Process: Examining the Consequences of a Conviction After *Padilla v. Kentucky* and *State v. Sandoval*

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I. INTRODUCTION

In 2010, the US Supreme Court held in *Padilla v. Kentucky* that effective assistance of counsel required that a criminal defense attorney provide affirmative advice for noncitizen clients who faced immigration consequences in their pleas or sentences.[1] On March 17, 2011, the Washington State Supreme Court issued *State v. Sandoval*, which analyzed *Padilla* and found that counsel's advice to his client "fell below an objective standard of reasonableness" when he downplayed the immigration consequences of his client's conviction.[2] While both of these cases deal specifically with the immigration advice for noncitizen clients, they provide a framework for analyzing what effective assistance of counsel means for criminal defense attorneys when providing advice on a sentence or plea bargain.

This article will examine not only immigration but also other consequences that result from a criminal conviction in Washington. It will argue that instead of analyzing a consequence as direct or collateral, the court must now determine whether a consequence is intimately related to the criminal process or an integral part of the penalty. When found to be an integral part of the penalty, an attorney must give affirmative advice regarding that consequence. Finally, this article will examine those consequences that are traditionally termed "direct," such as incarceration and supervision, and those that have been considered "collateral," like employment, registration, and driver's license restrictions. This article will look at what it means to give affirmative advice about these consequences

and then provide some advice on what competent counsel should do when faced with a particular issue.

Padilla held that an attorney has an obligation to provide affirmative advice on the consequences of a conviction that are "intimately related to the criminal process" and an "integral part of the penalty."[3] *Sandoval* made clear that when a plea involves obvious immigration consequences, it falls below the objective standard of reasonableness for an attorney to not give affirmative advice regarding those consequences to a noncitizen client.[4] Both *Sandoval* and *Padilla* deal with the issue of advising a noncitizen client on immigration consequences, but neither examined other consequences in detail.[5] Importantly, *Padilla* left open the broader issue of when affirmative advice for other consequences of a conviction is required, recognizing that the Court had never distinguished between direct and collateral consequences in defining the scope of constitutionally "reasonable professional assistance" required under *Strickland v. Washington*.[6] In fact, the Court specifically declined to reach the issue of whether the distinction between "direct" and "collateral" was an appropriate way to examine conviction consequences.[7]

As a result of *Padilla's* rule requiring affirmative advice for immigration consequences and the court's decision to not reach the broader issue, state and federal courts are grappling with whether to extend *Padilla* beyond the issue of immigration consequences.[8] While Washington State courts have not yet examined whether *Padilla* applies to other consequences, other courts extended this rule, including advice regarding post-release commitment hearings,[9] loss of pension,[10] sex offender registration requirements,[11] parole eligibility,[12] and eligibility for early release from prison for good behavior.[13] In all of these instances, the reviewing courts have extended *Padilla* beyond immigration and held that effective assistance requires affirmative advice with regard to these important consequences.[14]

The commonality in all of these cases is that competent counsel requires an understanding of the potential consequences of a sentence and an obligation to provide affirmative advice with regard to those consequences when it matters to that client.[15] Competent representation requires that an attorney discuss what matters to their individual client and then attempt to craft a specific resolution that comports with the client's stated goals.[16] Only those consequences that impact the individual client should be considered "integral to the penalty."[17] As consequences and clients are unique in every legal situation, it is not possible to say which consequences will matter in any particular case. Instead, competent counsel must take the time to consider which consequences are relevant whenever they represent a new client.

II. THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

A. Establishing Effective Assistance of Counsel at Sentencing: Strickland v. Washington

In *Strickland*, the Supreme Court established that the Sixth Amendment of the US Constitution required that an attorney must provide effective assistance of counsel at sentencing, holding that the defendant is entitled to relief where there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.[18] *Strickland* established a two-prong test to determine whether a defendant was entitled to withdraw a guilty plea.[19] The test requires the defendant to establish that counsel's representation fell "below an objective standard of reasonableness,"[20] and that there was a "reasonable probability that, but-for counsel's unprofessional errors, the result of the proceedings would have been different."[21]

Washington State courts examined *Strickland* prior to *Padilla* with regard to the consequences of a conviction, but courts only applied the *Strickland* test to direct consequences including incarceration, fines, and criminal

history.[22] Where a defendant could establish prejudice with respect to direct consequences, Washington courts strictly applied the *Strickland* test, finding that effective assistance was required by Sixth Amendment of the US Constitution and Article 1, Section 22 of the Washington State Constitution.[23] Prior to *Sandoval*, failure to advise a client on a traditionally termed collateral consequence could not be the basis for ineffective assistance of counsel in Washington.[24] It was only where the attorney actually misinformed the client of a consequence that a claim of ineffective assistance of counsel could be made.[25]

This analysis resulted in uneven and result-oriented rulings by the court that could be considered inconsistent with each other. For example, *In re Isadore* held that the failure to advise about community custody could result in a finding of ineffective assistance,[26] but *State v. Music* held that the failure to advise that the parole board could examine criminal history (which might result in a longer sentence) was collateral and not subject to a finding of ineffective assistance.[27] Furthermore, Washington State courts excluded immigration advice from being the basis of a claim of ineffective assistance, finding that deportation was collateral to the conviction and could only be the basis for withdrawal of a plea where the client was affirmatively misadvised.[28]

B. Washington's Commitment to Effective Assistance of Counsel: Council on Public Defense, RCW 10.101, State v. A.N.J.*, and CrR3.1*

The Washington State Bar Association (WSBA) established the Blue Ribbon Commission on Criminal Defense in 2003 to address concerns about the quality of indigent defense services in Washington.[29] As a result of the work done by the commission, the WSBA adopted Indigent Defense Standards in 2007.[30] The Indigent Defense standards are based upon standards created by the Washington Defender Association (WDA) that established—among other important principles—parity of pay with prosecutors, maximum caseloads, the requirement of training, and

experience levels in order to handle a particular type of case.[31] The commitment of the WSBA to improving public defense continues as the Blue Ribbon Commission has now been established as permanent part of the WSBA, known as the Council on Public Defense.[32]

The legislature has also shown its commitment to improving public defense.[33] RCW 10.101.030 requires each county to establish standards for the delivery of public defense services.[34] Counties must set standards for compensation, caseload limits, qualifications, supervision, and training, among other qualifications.[35] The legislature created this rule because "effective legal representation must be provided for indigent persons . . . consistent with the constitutional requirements of fairness, equal protection, and due process."[36] The Washington State Office of Public Defense (OPD), whose mission is "to implement the constitutional and statutory guarantees of counsel and to ensure the efficiency of indigent defense services,"[37] administers state funds to improve indigent defense services consistent with RCW 10.101.[38]

Despite these efforts, problems have persisted with regard to effective assistance, especially for indigent clients.[39] In 2004, the *Seattle Times* highlighted the problems in indigent defense in a series of articles titled "The Empty Promise of an Equal Defense."[40] These articles described the lack of standards in most Washington counties[41] and how it impacted the ability of an indigent client to receive effective assistance of counsel. Likewise, in 2004, the American Civil Liberties Union ACLU filed a lawsuit that challenged the constitutionality of indigent defense services in Grant County.[42] The court found that it was "virtually uncontested" that Grant County "suffered from systemic deficiencies," and the decision resulted in a settlement where the parties agreed to reduce excessive caseloads, guarantee that public defense lawyers are qualified to handle their cases, and to provide adequate funding for investigators and expert witnesses.[43] The settlement also created a monitor to ensure compliance with the agreement.[44]

The Washington State Supreme Court addressed ineffective assistance of counsel in *State v. A.N.J.*, a case decided prior to *Padilla*.[45] The Court recognized that "45 years after *Gideon*,[46] we continue our efforts to fulfill *Gideon's* promise" and that "inadequate funding and troublesome limits on indigent counsel have made the promise of effective assistance of counsel more myth than fact, more illusion than substance."[47] *A.N.J.* held that intelligently and voluntarily entering a plea of guilty includes assuring that the defendant understands the "nature of the charge and the consequences of the plea."[48] The concurring opinion further argued that the "judiciary should accept no shortcuts when it comes to discharging its constitutional obligation to appoint effective attorneys to represent indigent criminal defendants."[49] This decision was based upon both the issue of what it means to conduct an effective investigation and the requirement that an attorney must not misinform a client with regard to the consequence of a conviction.[50] Among other issues causing the court to conclude that the representation had led to a "manifest injustice," the attorney in this case failed to advise his client that the conviction could never be removed from his record.[51]

Further demonstrating Washington's commitment to ensure that indigent persons are provided with competent counsel, the Court amended CrR 3.1, CrRLJ 3.1, and JuCR 3.1 to include the requirement that all attorneys who provide representation to indigent persons must certify their compliance with the applicable WSBA Standards for Indigent Defense Services.[52] While the Court has not yet determined the applicable standards that an attorney must certify to, the Court intended for this certification process to ensure that all lawyers have the resources necessary to provide competent representation.[53] The WSBA Board of Governors, among other criteria, have recommended to the Supreme Court that these standards include, for the first time, a maximum number of cases that an attorney can handle in a year when they represent indigent persons.[54] These standards are intended to go into effect in full in 2013.[55]

C. Establishing a Standard for Consequences that are "Intimately Related to the Criminal Process" in Padilla v. Kentucky

In *Padilla*, the US Supreme Court analyzed what it means to provide effective assistance to a noncitizen when giving advice on a charge that will result in deportation.[56] *Padilla* focused on the changes in immigration law since the Court examined immigration issues in *Fong Haw Tan v. Phelan*.[57] The Court recognized the "drastic measure" of deportation or removal to a noncitizen in *Fong Haw Tan,*[58] and that under current immigration law and policy, deportation or removal is "virtually inevitable for a vast number of noncitizens convicted of crimes."[59]

The Court rejected the argument that as a collateral consequence, immigration consequences were not subject to an analysis under the rules of effective assistance of counsel; instead, it held that "counsel must inform her client whether his plea carries a risk of deportation."[60] Importantly, the Court did not limit this holding to immigration consequences, writing that it had "never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance.'"[61] Because of the nature of immigration consequences, the Court declined to reach the broader issue.[62]

Instead, *Padilla* focused on how the immigration consequences of a conviction were "intimately related to the criminal process" and "an integral part of the penalty."[63] The importance of this opinion to noncitizens facing criminal charges is clear. The Court recognized that immigration charges were civil in nature.[64] Nonetheless, because the consequences were "intimately related to the criminal process," it was ineffective assistance when an attorney failed to provide affirmative advice on the immigration consequences of criminal charges.[65]

Padilla intentionally left open the question of whether this analysis can be applied to other consequences.[66] The Court specifically held that the distinction was "ill-suited to evaluating a *Strickland* claim concerning the specific risk of deportation."[67] It makes sense that this analysis can be

applied to other consequences, too. Those consequences that meet the standard set by *Padilla* and are "intimately related to the criminal process" should be subject to a *Strickland* analysis; those that do not meet that standard should not be able to withdraw a plea for failure to advise on that consequence.[68]

D. Applying Padilla *in Washington:* State v. Sandoval

Washington is one of the first states to apply *Padilla* to consequences formerly considered to be "collateral." In *Sandoval*, defense counsel advised his client that "he would not be immediately deported and that he would then have sufficient time to retain proper immigration counsel to ameliorate any potential immigration consequences of his guilty plea."[69] Sandoval stated, "I trusted my attorney to know that what he was telling me was the truth."[70]

The court found that "Sandoval's counsel during the plea process "fell below an objective standard of reasonableness"[71] and "was constitutionally incompetent because his advice regarding the immigration consequences of Sandoval's plea impermissibly downplayed the risks."[72] Importantly, because the immigration consequences of the particular plea that Sandoval accepted were "truly clear," it was not necessary to examine whether the attorney had an "obligation to 'satisfy the interests' of the client, perhaps by 'plea bargain[ing] creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation.'"[73] *Sandoval* left open the issue of an attorney's additional obligations "if and when they are squarely presented."[74]

E. A Path Forward: Applying Padilla *to the Consequences of a Conviction That Are "Intimately Related to the Criminal Process" and an "Integral Part of the Penalty"*

Padilla established a bright line rule for immigration consequences that are truly clear. For such consequences, an attorney must provide their client

with affirmative advice. Where the consequence is not clear, the Court requires, at a minimum, that "a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences."[75] This limitation on the rule does not mean that the Court endorses a practice where an attorney should only meet this minimal standard. Instead, the Court clearly acknowledged that competent representation for noncitizens also means considering the adverse implications of a plea when the Court recognized that "'preserving the possibility of' discretionary relief from deportation under § 212(c) of the 1952 INA…'would have been one of the principal benefits sought by defendants deciding whether to accept a plea offer or instead to proceed to trial.'"[76]

The question that *Padilla* did not answer was what an attorney should do when a client identifies a consequence as "intimately related to the criminal process" and an "integral part of the penalty." Likewise, *Sandoval* limited its holding to those instances where the immigration consequences are truly clear.[77] Thus, the issue that will continue to be litigated with regard to effective assistance of counsel is what an attorney is obligated to do when faced with non-immigration-related consequences that are truly clear.

Already, other courts have begun to examine this issue. State and federal courts analyzing this issue have applied *Padilla* to issues other than immigration rights.[78] In Pennsylvania, *Padilla* has been applied to the loss of a teacher's pension as a consequence of pleading guilty to indecent assault.[79] Georgia found that it was constitutionally deficient to fail to provide advice regarding sex offender registration requirements because of the requirements of *Padilla*.[80] The Eleventh Circuit Court of Appeals held that it was ineffective assistance to fail to advise a client of the civil commitment that could result from a sex offense conviction.[81] Several states have found that *Padilla* applies to advice regarding parole eligibility and the ability to receive good time on a prison sentence.[82] These cases all demonstrate that the analysis conducted in *Padilla* can, and certainly is,

applied to other consequences, especially those that courts have found to be fundamental or related to constitutional rights. These may include the right to vote, serve on a jury, possess a firearm, create and remain with your family, and serve in the military.[83] Likewise, those consequences which result in "drastic measures," including registration as a sex offender, the imposition of legal financial obligations, losing the ability to work, losing the right drive a vehicle, losing stable housing, and losing the ability to seek an education may also fall within the *Padilla's* definition of "integral part" of the penalty.[84] Where the consequence may result in drastic measures for the client, competent representation requires affirmative advice.[85]

III. CONSEQUENCES OF A CONVICTION IN WASHINGTON STATE

Effective assistance of counsel does not require an attorney to consider all of the consequences of a conviction when advising a client about a plea bargain.[86] Instead, effective assistance means listening to the client, determining what the client's goals are in the case, and then crafting a disposition that is consistent with those goals. While most persons will be concerned about the amount of time that they must spend in jail or on supervision, these are not necessarily the only goals or even, in some circumstances, the primary concerns that some clients will have in resolution of their cases.[87] Among other important consequences are registration, criminal history, immigration, legal financial obligations, firearm possession, employment, housing, public benefits, family rights, driver's license restrictions, loss of civil rights, federal student loans, military service, and traveling abroad. The remainder of this article discusses these consequences in fuller detail, touching on what attorneys should know as they give legal advice regarding each consequence.

A. Immigration

Recognized as an "integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants,"

effective assistance of counsel requires a competent attorney to appropriately advise noncitizen clients with regard to the immigration consequences of their convictions.[88] In *Padilla*, the Supreme Court rejected the reasoning that deportation was a collateral consequence of a conviction and, as a result, fell outside of the Sixth Amendment obligation of effective assistance of counsel.[89] The Court noted that it never adopted the collateral consequences doctrine as a benchmark for ineffective assistance.[90] Instead, the Court held that because of the "close connection to the criminal process," attorneys have an affirmative obligation to advise their clients with respect to the immigration consequences of a plea.[91] After *Padilla's* holding, the "importance of accurate legal advice for noncitizens accused of crimes has never been more important." [92]

Padilla directs attorneys to provide affirmative advice with regard to the consequences of a conviction when analyzing the impact of a conviction on a noncitizen defendant.[93] When the immigration consequences are clear, defense counsel has a duty to provide advice that is "equally clear."[94] Even where the law is not "succinct and straightforward," competent counsel must still advise clients that the criminal charges "may carry a risk of adverse immigration consequences."[95]

Unlike *Padilla*, which only addresses the issue of whether representation for a noncitizen client "fell below an objective standard of reasonableness," the Washington State Supreme Court analyzed prejudice in *Sandoval* and found that because "Sandoval would have been rational to take his chances at trial, . . . counsel's unreasonable advice prejudiced him."[96] This important step forward sets a framework for what attorneys ought to do when representing a noncitizen client and recognizes that the risk of "banishment or exile"[97] and "separation from their families"[98] can be more important than incarceration for noncitizen defendants.[99]

For many criminal defense attorneys, much about immigration law is not clear, and the struggle to become competent without support from an immigration specialist is challenging.[100] States are working to determine the

appropriate model for providing assistance, which includes creating a central resource counsel system, an in-house attorney, or working with contract counsel.[101] Most Washington State public defenders work under the central resource model, with the Washington Defender Association Immigration Project (WDAIP) acting as the central resource for attorneys seeking current information about the immigration effects of criminal convictions.[102] Over the course of the last ten years, WDAIP has handled over 12,000 individual case consultations, provided over one hundred trainings, and worked with more than 5,000 participants on the immigration consequences of a crime.[103] To be competent on this issue, the best thing that an attorney can do is consult with an immigration law specialist, either through WDAIP or someone else.

B. Sentencing and Incarceration

While *Padilla* focuses on immigration, the primary concern for most persons accused of crimes is the question of incarceration, regardless of what other consequences they may be facing.[104] Incarceration is a direct consequence of a conviction, and there is no question that the *Strickland* analysis applies when an attorney fails to properly advise a client with respect to the length of a sentence the client will serve.[105] For almost every person accused of a crime, this is the primary concern regardless of the other consequences they may face.[106] In every case, it is expected that the attorney shall give affirmative advice with regard to this consequence.[107]

In Washington State, felonies and misdemeanors are sentenced differently.[108] Courts must abide by the Sentencing Reform Act (SRA)[109] for felony convictions, which restricts how a court can impose a sentence. For misdemeanor offenses, the court may impose any term up to the statutory maximum.[110]

For felonies, the court must impose a sentence within the standard range set in RCW 9.94A unless it finds "substantial and compelling" reasons to justify an exceptional sentence.[111] In order to determine the standard range

for a sentence, the court examines the seriousness level of the crime[112] and the defendant's criminal history.[113] Once the court has determined the offender's score based upon those two factors, the court is bound, except for exceptional circumstances, to impose a sentence within the standard range.[114] The court may impose a sentence outside the standard range when it complies with statutory and constitutional provisions.[115] Where a sentence enhancement is pled and proven, the court is also obligated to impose the enhancement in addition to any time imposed within the standard range.[116] For sentences above the standard range that are not based solely on criminal history, a jury must find beyond a reasonable doubt that there is an exceptional circumstance before the sentence may be imposed.[117] Finally, where the court finds mitigating circumstances, the court may impose a sentence below the standard range.[118]

While most felony sentences are determinate, some sex offenders may be subject to an indeterminate sentence where the maximum term of their incarceration is the statutory maximum for the offense.[119] Persistent offenders—those who have committed "two-strike" or "three-strike" offenses—face the possibility of life without the possibility of parole if convicted of their final strike offense.[120] Where a person is convicted of any two-strike offense or upon conviction of any new sex offense (except failure to register as a sex offender) and has been previously convicted of a two-strike offense, the person must be sentenced to a "determinate-plus" sentence.[121] For these offenses, the court must impose a sentence with a determinate minimum and an indeterminate maximum sentence, where the maximum term of incarceration will be the statutory maximum for the offense.[122] Determinate-plus sentences are subject to all the same rules as other sentences, meaning that sentence enhancements may apply to increase the minimum sentence that the court may impose, and the court may impose exceptional sentences if authorized.[123]

Persistent offender sentences are commonly known as "three-strike" or "two-strike" sentences.[124] A person who is convicted as a persistent

offender must be sentenced to a term of life without the possibility of parole.[125] Three-strike offenses are defined as "most serious" offenses.[126] A three-strike offender must have been previously convicted of two "most serious" offenses in Washington (or an equivalent offense in another state) on at least two prior occasions.[127] Two-strike offenders must be convicted of specified sex offenses on two separate occasions.[128] In both cases, where the court finds the defendant to be a persistent offender, the court must sentence that person to life without the possibility of parole.[129]

Except for offenders serving life without parole sentences or capital sentences, all persons incarcerated in Washington are entitled to earned release time for "good behavior and good performance" while incarcerated.[130] For offenses committed after July 1, 2003, earned release time may reduce a sentence by 10 to 33 percent.[131] To be eligible for release prior to the completion of their sentenced time, the person must provide the Department of Corrections (DOC) with an approved residence and release plan.[132] Earned release time may not be credited against some sentence enhancements, including firearm and deadly weapon enhancements.[133] Local jails are not subject to the DOC rules in determining how much good time may be awarded.[134] Good time for offenders sentenced locally may vary widely, depending upon the county where that person is sentenced.[135]

Misdemeanor and gross misdemeanor sentences are defined by statute.[136] Unlike felony sentencing, there are no guidelines for courts to follow to determine appropriate sentences for misdemeanor offenses, which means that a person convicted of a misdemeanor or gross misdemeanor offense may be sentenced from no jail time up to the maximum sentence allowed by statute.[137] Also, unlike most felony sentences, a court may suspend a misdemeanor or gross misdemeanor sentence.[138] Failure to comply with the terms and conditions of a misdemeanor or gross misdemeanor sentence can result in the court imposing the suspended or nonexecuted sentence up to the maximum allowed for the offense.[139]

C. *Supervision, Community Custody, and the Indeterminate Sentence Review Board*

Like incarceration, supervision and parole are considered traditional direct consequences of a conviction.[140] Especially where a person discovers that they are unlikely to be paroled on the charges for which they are pleading guilty, it is incumbent upon the attorney to give clear advice to every client facing supervision or release conditions after they have completed their sentence.[141]

Convictions for both felonies and misdemeanors may subject a person to supervision.[142] The DOC is required to conduct a risk assessment[143] before requiring that an offender serve community custody for a felony other than one for which supervision is mandatory.[144] Offenders who are determined to be at a high risk to reoffend must be supervised; all others will only be supervised if it is required by statute.[145] Depending upon the offense, supervision for a felony may be from one to three years.[146] Persons who are convicted of misdemeanors or gross misdemeanors may also be sentenced to supervision.[147] Persons sentenced to a term of supervision must comply with the conditions of supervision,[148] and a failure to follow those conditions can result in a sanction up to the maximum range of the charge for which the person was convicted.[149]

Some persons may not be released from incarceration until approved by the Indeterminate Sentence Review Board (ISRB).[150] The ISRB oversees felony offenders who have committed their crimes prior to July 1, 1984,[151] and some sex offenders who have offense dates after August 31, 2001.[152] For felony offenders who committed their offenses prior to July 1, 1984, the ISRB sets the offender's minimum term, and that offender may not be paroled until the ISRB determines that release is appropriate.[153] While the ISRB also determines whether a person serving a determinate-plus sentence may be released to community custody, it is the court that sets the minimum term that that offender must serve.[154] It is important to advise your client that release on a determinate-plus sentence may not occur upon first review.

In fact, currently only about 36 percent of those who appear before the board at any time are determined to be releasable.[155] Offenders who are not releasable must wait for their next hearing before being reconsidered for release.[156] The new minimum term shall not exceed five years for any offender subject to ISRB review.[157]

D. Registration

The requirement to register is a long-term consequence that may have a serious impact on the future of any person convicted of an offense requiring registration.[158] Registration makes it challenging to remain employed[159] and maintain stable housing.[160] As registration for many persons may last for life, an attorney must give affirmative advice to any client facing the possibility of registration.[161] An attorney whose client is facing the possibility of registration should seek a plea bargain that either eliminates or reduces the length of time that a person must be registered.[162] Even where the attorney can reduce the charge to one that carries a finite period of time of required registration, they have improved their client's circumstances and have made it more likely that the client will be able to reintegrate into society in the future.[163]

Any juvenile or adult who has been convicted of any sex or kidnapping offense (or who has been found not guilty by reason of insanity for these offenses) must register their address with their county sheriff.[164] All offenders not in custody will be assessed for their likelihood to reoffend and classified according to their risk level.[165] A Level I classification (an offender who is at low risk to reoffend) entitles the state to disclose relevant, necessary, and accurate information to any victim, witness, or individual community member who lives near the offender's residence.[166] A Level II classification (moderate risk to reoffend) allows disclosure to public and private schools, child daycare centers, family daycare providers, businesses and organizations that primarily serve children, women or vulnerable adults, neighbors, and community groups near where the

offender lives, expects to live, or is regularly found.[167] A Level III classification (high level to reoffend) allows law enforcement to disclose information about the offender to the public at large.[168]

Failure to register is a felony offense.[169] The obligation to register continues until the offender has been relieved of the duty to register.[170] For adult offenders who committed a class C felony offense, the duty to register lasts until the person has spent ten consecutive years in the community without being convicted of a disqualifying offense.[171] For class B felonies, the person must meet the same conditions for fifteen years from the last date of release from confinement.[172] The duty to register for adult offenders convicted of a class A offense is for life.[173] Juveniles fifteen or older who are convicted of a class A sex offense are entitled to relief from registration where at least sixty months have passed, so long as they have not committed a new sex offense during the sixty months, been found guilty of failure to register as a sex offender within the sixty months prior to filing the petition and can show by a preponderance of the evidence that they are sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.[174] All other juveniles may apply for relief when at least twenty-four months have passed since the adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the juvenile has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses.[175] To be eligible for relief, the juvenile must also demonstrate that he or she has not has not been adjudicated or convicted of a failure to register during the twenty-four months prior to filing the petition.[176] For juveniles who were fifteen or older at the time of the offense must also show by clear and convincing evidence that they are sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.[177] For juveniles who were under the age of fifteen, the standard to warrant removal from registration is a preponderance of the evidence.[178]The requirement to register is defined as a collateral consequence because it does not alter the

standard of punishment.[179] This means that the duty to register, which does not follow directly from the conviction, may be imposed for persons convicted of crimes that did not include a registration requirement at the time of the conviction.[180] Nonetheless, its impact is "significant, certain and known."[181] Under current law, where a person is misled with regard to this consequence, it may be a basis for withdrawal of a plea.[182] Analyzed under *Padilla*—which made clear that there is no relevant difference "between an act of commission and an act of omission"—whether an attorney misadvised or failed to give affirmative advice should be irrelevant to the analysis of the attorney's obligation with regard to registration.[183] As it can lead to the same separation from family and housing issues similar to those in *Sandoval*, Washington may find that it is "rational" for a defendant to go to trial rather than risk long-term registration requirements.[184]

E. Criminal History

While the short-term consequences of serving time in custody is often the primary concern of persons facing criminal charges, the long term impacts of a criminal record cannot be understated.[185] The Washington State Patrol (WSP) maintains a database of criminal history, which can be accessed online.[186] Local criminal justice agencies are required to provide the WSP with felony and gross misdemeanor arrest and disposition data.[187] This data, along with arrests under one year and current pending charges, are available to the general public.[188] This data can be corrected, if inaccurately reported, by filing forms with the WSP Identification and Criminal History Section.[189]

In limited circumstances, a person may be able to get a conviction, favorable disposition, or an arrest vacated, sealed, or expunged from their record.[190] A person with a vacated conviction may state that they have not been convicted of that crime, but if the court file is not destroyed, it may be used in a later criminal prosecution.[191] A court may seal a record that has been vacated or if it finds that "compelling privacy or safety concerns

outweigh the public interest in access to the record."[192] Keep in mind that although a court has ordered a record to be restricted, it may still be accessible under the Public Records Act.[193]

Adult felony convictions that occurred after July 1, 1984, may only be sealed if they were class B or C offenses that were not violent, sexual, or crimes against a person.[194] For class B felonies, the person must have lived in the community crime-free for at least ten years; for most class C felonies, the time period is five years.[195] In addition, the person seeking to have their record vacated must demonstrate that there are no other pending charges in any court in any state or with the federal government, and they have not been convicted of any new crime since the date of discharge.[196]

Adult misdemeanor and gross misdemeanor sentences may only be vacated if no other convictions have been previously vacated and no restraining orders were issued in the last five years.[197] For domestic violence offenses, the person must demonstrate that they were crime-free for five years from the completion of all sentencing requirements; for all other offenders, the crime free requirement is three years.[198] Certain misdemeanor offenses are ineligible for vacation under any circumstances, including DUIs, certain sex offenses, and violent offenses committed under RCW 9.94A.030.[199]

The rules for juvenile offenses offer greater ability for sealing and vacation.[200] Any juvenile conviction, other than sex offenses, may be sealed if (1) the petitioner demonstrates that there is no pending proceeding against them in any court, and (2) the juvenile has remained crime-free for the requisite time period.[201] The time period for class A felonies is five years; for all other offenses it is two years.[202] Restriction to these records is also greatly reduced once the juvenile turns twenty-one.[203]

Only nonconviction data may be destroyed or expunged from a person's criminal history.[204] Such data may be destroyed if the person has no prior convictions, no subsequent arrests, and the requisite time period passes.[205] Favorable dispositions may be destroyed after two years; arrest information

may be deleted after three years.[206] Fingerprint and identifying data may also be destroyed if eligibility requirements are met.[207] This does not, however, mean that this information will be erased from all databases.[208] It is extremely unlikely that all data will ever be destroyed, given the fact that it is so easily and widely disseminated at the beginning of a case.[209]

The most important things an attorney can do with regard to criminal history is make it clear to their client that what they are pleading guilty to will result in criminal history and to ensure the client understands what a conviction record means.[210]

F. Legal Financial Obligations[211]

One of the most serious long-term consequences of a conviction are the Legal Financial Obligations (LFOs) imposed whenever a person is convicted of a crime.[212] LFOs include restitution, fines, and fees that are assessed in superior court cases regardless of a person's ability to pay.[213] While many are not mandatory, courts must impose some LFOs, including the Victim Penalty Assessment[214] and the DNA Collection Fee.[215] LFOs are an important barrier to the reintegration process, including finding housing, employment, and maintaining good credit.[216]

> Even for those men and women with unpaid LFOs who do not end up back behind bars, their substantial legal debts pose a significant, and at times insurmountable, barrier as they attempt to reenter society. They see their incomes reduced, their credit ratings worsen, their prospects for housing and employment dim, and their chances of ending up back in jail or prison increase.[217]

As a result, defense counsel must be aware of the potential LFOs that can be assessed in their clients' cases and should seek to limit the impact of the LFOs on their clients' futures.

When negotiating a case, attorneys should keep in mind that LFOs are "an important barrier to the reintegration process."[218] Legal debt potentially limits income and has an effect on credit ratings, "which in turn [may] limit

a person's ability to secure stable housing."[219] Furthermore, LFOs begin accruing interest from the judgment's date of entry at a 12 percent rate applicable to civil judgments, although a person who owes LFOs may seek automatic interest waiver for the time they spent incarcerated on the original charge.[220] Courts may reduce or waive the interest portion of certain LFOs under limited circumstances, but "only as an incentive for the offender to meet his financial obligations."[221] Given the dangers of limited income, effect on credit, and compounded interest, attorneys may improve their client's ability to reintegrate into society by limiting LFOs imposed at sentencing.

Restitution is an obligation owed to an injured party, intended to make that party whole for his or her injuries.[222] The court should only order restitution when a person is convicted of an act that resulted in injury to a person or damage to property.[223] It is an amount based upon easily ascertainable damages,[224] and it should not be ordered to provide reimbursement for mental anguish, pain and suffering, or other intangible losses.[225] Restitution may be ordered up to twice the amount the defendant gained or the injured party lost as a result of the crime.[226] Where extraordinary circumstances make restitution inappropriate, courts have the power to order no restitution.[227] Restitution may not be waived in modification hearings, even if you are able to demonstrate that your client does not have the ability to pay.[228]

Fines are penalties assessed against the defendant as part of his or her punishment.[229] The maximum penalty that a person can receive depends upon the offense for which they are convicted.[230] The maximum fine that a person can receive for class A felonies is $50,000; for class B felonies, $20,000; and for class C felonies, $10,000.[231] For gross misdemeanors, the maximum fine is $5,000; for a misdemeanor, it is $1,000.[232] None of these fines are mandatory.[233]

Fees are used to pay for many services involved in trial and sentencing, including court costs, supervision costs, and incarceration costs.[234] Most

fines and fees are discretionary; although some, like the DNA collection fee[235] and the Victim Penalty Assessment,[236] must be imposed. When the decision to impose LFOs is made at sentencing, the court is directed that it "shall not order a defendant to pay costs unless the defendant is or will be able to pay them." The court's decision must take into account "the financial resources of the defendant and the nature of the burden that payment of costs will impose."[237] This means that the court may waive most legal financial obligations based upon inability to pay, unless the court finds that there is a future likelihood that the defendant's indigency will end, allowing him or her to pay the LFOs.[238]

When able to identify a "manifest hardship," a person may petition the court for remission of some LFOs.[239] The movant must demonstrate that the LFOs have resulted in a "manifest hardship" to the movant or his or her family.[240] This is a separate inquiry from the "future likelihood" test employed at sentencing, which determines whether the sentenced person will ever have the ability to pay.[241] At sentencing, the court may impose a "conditional obligation" to pay LFOs based upon the future likelihood of being able to make such payments.[242] Subsequently, "the obligation to repay the State accrues only to those who later acquire the means to do so without hardship."[243] In other words, "[t]hose who remain indigent or for whom repayment would work 'manifest hardship' are forever exempt from any obligation to repay."[244] A remission hearing is one that takes place at a later date, where the movant attempts to demonstrate that they lack the current ability to make his or her LFO payments.[245]

A person who has willfully failed to pay his or her LFOs may be subject to sanctions.[246] If the failure to pay is not willful, the court may modify the previous order to pay by reducing the monthly payment.[247] Due process precludes jailing someone for failure to pay a fine if their failure to pay was due to that person's indigence.[248] It is only when a person is capable of paying but willfully refuses or does not "make sufficient bona fide efforts to seek employment or borrow money in order to pay" can the State may

imprison him or her.[249] While the burden is on the obligor to show that his nonpayment is not willful,[250] due process still imposes a duty on the court to inquire into that person's ability to pay.[251] This inquiry comes at "the point of collection and when sanctions are sought for nonpayment."[252] Sanctions can range from incarceration to community-based alternatives, depending upon the severity of the violation and the availability of resources.[253]

As with a criminal conviction, eliminating LFOs for a client is virtually impossible. But advocating for only those LFOs which are mandatory and limiting their impact are efforts that may have a significant effect on a person's ability to successfully reintegrate into society.[254] Where a client identifies their inability to pay future LFOs, best practice requires that an attorney identify those issues for the court and attempt to mitigate the impact of the LFOs.

G. Firearm Possession

The right to possess a firearm is based upon the Constitution's Second Amendment and was reaffirmed in *District of Columbia v. Heller* as a fundamental right of citizenship.[255] Because the state may restrict the right of a person to possess a firearm when they have been convicted of a crime, attorneys must give affirmative advice to their clients with respect to this consequence.[256] Like many of these consequences, there may be little that an attorney can do to mitigate removal of this right, as the loss of firearm rights is a consequence of all felonies and many misdemeanors.[257] Where the consequence cannot be avoided, the client must decide whether to plea guilty or proceed to trial and face the more drastic consequences that may follow upon conviction.

Under Washington State law, persons convicted of felonies, crimes of domestic violence, or persons who have been involuntarily committed are prohibited from owning or possessing firearms until their right to do so has been reinstated.[258] Federal law restricts persons convicted of domestic violence,[259] fugitives, drug addicts, illegal noncitizens, persons

dishonorably discharged from the military, and persons subject to domestic violence protection orders from possessing firearms.[260] In addition, persons who have been charged with a felony, but not yet convicted, are prohibited by federal law from *acquiring* a firearm.[261] What constitutes a conviction is determined in accordance with the law of the jurisdiction in which the proceedings were held. "Any conviction which has been expunged, or set aside, or for which a person has been pardoned or has had civil rights restored" shall not be considered a conviction unless "such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."[262]

To restore their clients' firearm rights in Washington, attorneys must first determine whether state or federal statutes apply. If a state court renders the conviction, state law applies, but some restrictions (like those for violent crimes and domestic violence) may only be restored in federal court.[263] Generally, however, a person may petition the court for reinstatement under state law if they received a state conviction.[264] For a felony offense, the person must have remained crime-free in the community for at least five years, and the person may not have a prior conviction that prohibits the possession of a firearm as part of their offender score.[265] Misdemeanor offenses require that the individual have been crime-free for three years, all conditions of their sentence have been completed, and no prior felony convictions are counted as part of the offender score to prohibit the possession of a firearm.[266] Persons with federal convictions must seek restoration of their firearm rights through the Bureau of Alcohol, Tobacco, Firearms and Explosives; although, there currently is no process for doing so.[267]

For persons facing felonies or misdemeanors that result in the loss of the right to possess a firearm, an attorney may be able to craft a plea that results in a nondisqualifying conviction. For most felony charges, this may be an extremely difficult task unless the prosecutor is willing to reduce the charges to a nonqualifying misdemeanor.[268] Even with felonies, however, it

is possible to resolve a matter with a charge where restoration at some point in the future can happen.[269] If the right to possess a firearm is identified as an important issue by the client, an attorney should attempt to mitigate this consequence and, at the very least, provide clear notification with respect to the loss of this right.[270]

H. Employment

Losing the ability to hold employment may have an enormous impact on a person's ability to reintegrate into society and become rehabilitated.[271] People with criminal records have a difficult time finding employment, with some studies suggesting that at least 65 percent of all employers will not knowingly hire an ex-offender, and many routinely check the criminal history of their recent hires.[272] The Restoration of Employment Rights Act prohibits government entities from denying employment or occupational licenses because of a felony conviction. There are many exceptions to this rule that will be discussed below, but they include exceptions for felonies that directly relate to the position of employment sought, positions with the treasurer's office (when the prior conviction involved embezzlement or theft), crimes against children specified under RCW 28A.400.322, and for health care workers.[273]

Criminal background checks are required for persons who are employed by, contract with, or are licensed by the Department of Social and Health Services (DSHS).[274] Crimes against children or other persons[275] will prohibit persons from working in nursing homes, adult family homes, boarding homes, and childcare facilities.[276] Crimes of financial exploitation[277] will also make a person ineligible to work with vulnerable adults, e.g., in nursing homes.[278] The time limits for ineligibility vary depending on the crime committed.[279] Persons who have felony convictions for crimes against children, "spousal abuse," or violent crimes will be permanently prohibited from contracting with or being licensed by DSHS to provide care for children or developmentally disabled individuals.[280]

Assault or sex offense convictions not included in the permanent bar (or any other felony) will disqualify individuals from licensing, contracting, certification, or having unsupervised access to children or individuals with a developmental disability for five years.[281]

Likewise, schools may deny employment based upon criminal history.[282] School districts and their contractors are required to conduct background checks on all employees who will have regular unsupervised access to children.[283] Crimes against children automatically disqualify persons from becoming school employees, contractors with schools, or school bus drivers.[284] Certified school employees such as teachers are also required to have "good moral character," meaning that they must have no convictions in the last ten years, including motor vehicle violations, which "would materially and substantially impair the individual's worthiness and ability to serve as a professional within the public and private schools of the state."[285] Although not required, schools may also request that volunteers provide criminal background checks.[286]

Washington State law[287] also restricts employment with local law enforcement in a variety of ways: as a tow truck operator contracting with the WSP;[288] as a WSP assistance van driver;[289] and as an employee or volunteer with the Juvenile Rehabilitation Administration.[290] In addition, any restrictions on possessing a driver's license or firearm may impact an offender's ability to be employed when possession of these items is a lawful condition to employment.[291]

Furthermore, federal law prohibits financial institutions from employing a person who has been convicted of a crime of dishonesty, breach of trust, or theft unless he or she has received written consent from the Federal Deposit Insurance Corporation.[292] For purposes of this law, pretrial diversion or similar programs are considered to be convictions.[293] Federal law also bars certain classes of felons from working in the insurance industry without having received permission from an insurance regulatory official;[294] holding any of several positions in a union or other organization

that manages an employee benefit plan;[295] providing healthcare services which receive payment from Medicare;[296] working for the generic drug industry;[297] providing prisoner transportation;[298] and employment in aviation security.[299]

In Washington, it is lawful for prospective employers to inquire into preconviction data, which includes arrests that were ultimately dismissed.[300] Generally, arrests that are more than ten years old are not subject to disclosure.[301] Certain agencies and organizations, such as law enforcement, state agencies, DSHS, schools, and organizations that have direct responsibility for the supervision, care, or treatment of children, mentally ill persons, developmentally disabled persons, or other vulnerable adults are exempt from the ten-year restriction on disclosure.[302] Similarly, it is considered fair under Washington's discrimination law to inquire into convictions from less than ten years ago (from the date of release from prison).[303] Certain agencies and organizations, including DSHS and schools, are also exempt from the time restrictions for convictions.

Where a person loses their job as a result of a conviction (or their job requires licensing that can be revoked), counsel should attempt to craft a plea that will not jeopardize the person's employment status. In many cases, crafting a plea to a particular charge, even where it carries other serious penalties, may be preferable to one that results in dismissal from a job or future employment. Where a client may wish to keep an employment option open, determining the best way to ensure that the conviction will not prevent the client from remaining a viable candidate for the job may be the most important issue to resolve in plea negotiations. Even when a client loses their employment as the result of incarceration, it is still possible to provide advice and craft a plea that minimizes the future impact on the client's life and reentry into society.[304]

I. Housing

Increasingly, the ability to find stable housing has become an issue for persons who are convicted of crimes. A person returning from incarceration without a place to live is far more likely to re-offend than someone who has stable housing upon release.[305] Especially when a client or their family lives in public housing, this consequence must be taken into consideration when crafting a resolution. Again, it may be that a person will be willing to suffer greater direct consequences if they can avoid convictions that will result in their exclusion from housing options. Like all consequences, the most important thing for the attorney to do is to assess the needs of their client and attempt to craft a plea that accounts for those needs.

1. Private Housing

In Washington State, landlords are permitted to screen and deny housing to individuals based on their criminal history, but landlords may not deny housing based upon discriminatory reasons.[306] For example, a private landlord is not permitted to deny housing solely based on an applicant's history of domestic violence without inquiring as to whether the applicant was the victim or perpetrator.[307] Additionally, housing may not be denied because of a past drug addiction,[308] but a private landlord may deny housing based on a reasonable belief that an applicant is currently engaged in illegal drug use.[309] A landlord may deny housing based on a conviction for manufacture or distribution of a controlled substance.[310]

The statutes governing eviction from residential property allow landlords to evict a person who has been arrested (whether or not convicted) for assault or unlawful use of a firearm or other deadly weapon on the premises.[311] A landlord also may evict a tenant for engaging or allowing another to engage in gang or drug-related activity on the premises.[312] Tenants of mobile home parks may be evicted for criminal activity that threatens the health, safety, or welfare of the tenants.[313]

2. Public Housing

Federal law regulates admission and eviction from housing programs funded through the US Department of Housing and Urban Development (HUD).[314] Local Public Housing Authorities (PHAs), like the Seattle Housing Authority, administer numerous types of HUD-funded housing programs including public housing projects, Section 8 voucher programs, and multi-family housing programs.[315] Different housing providers receiving the same type of HUD funding may have different admission and eviction requirements.[316] Whereas larger housing programs have stricter screening rules for tenants, there are no federal rules for screening the criminal history of applicants to some of the smaller HUD programs such as the Supportive Housing Program or the Low Income Housing Tax Credit.[317]

Perhaps most importantly, some convictions may result in mandatory life bans from public housing. Households that include a registered sex offender[318] or a person convicted of the manufacture or production of methamphetamines may not maintain residence on the premises of federally assisted housing programs.[319] If an individual was evicted from federally assisted housing for drug-related activity, he or she faces a three-year ban from the date of eviction unless the housing provider determines that he or she has successfully completed a supervised drug rehabilitation program approved by the PHA, or the circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).[320]

Furthermore, a housing provider may evict residents if the provider has a reasonable belief that the residents are currently engaged in the illegal use of a controlled substance or whose pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.[321] Households believed to be engaging in a pattern of alcohol abuse that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents also face a ban.[322] A HUD housing provider is permitted to exclude any household including a member who has currently

or recently engaged in—or even engaged in during a "reasonable time" before the admission's decision[323]—a criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or staff.[324] HUD's guidance policy suggests that "five years may be reasonable for serious offenses," although PHAs and individual owners may differentiate as to what a reasonable time period is for different types of criminal activity.[325]

Other illegal activity may result in discretionary eviction. Drug-related criminal activity "on or off" the premises of a public housing project is grounds for eviction, and it allows PHA authority to evict family members for the activities of other household members or guests.[326] HUD-funded projects also consider drug-related criminal activity "on or near" the premises to be grounds for eviction.[327] Public housing providers may evict persons for other criminal activities which threaten the health, safety, or right to peaceful enjoyment of the premises by other residents, persons residing in the immediate vicinity, or on-site property management staff. When considering an eviction, housing providers have broad discretion to consider all relevant circumstances.[328] Finally, a federally funded housing provider may also evict tenants who are fleeing felons or on probation or in violation of their parole.[329]

An attorney representing someone who lives in subsidized housing should advise their client that a conviction may result in eviction and the inability to seek future public housing. Where an eviction proceeding has already begun, it is generally preferable to wait until after those hearings are complete before resolving the criminal charge, as waiting may minimize the impact of the conviction on the eviction proceedings.

J. Public Benefits

Federal funding for public benefits is generally distributed through the Welfare Reform Act and a program called Temporary Assistance for Needy Families (TANF).[330] Restrictions under TANF can restrict the ability of

families to get necessary benefits.[331] Washington's restrictions are less severe than the federal restrictions but are nonetheless significant as they restrict new residents and alcohol or drug dependent persons.[332]

Ineligibility for benefits may happen for a number of reasons. A person who has been convicted of a felony drug offense may need to submit to drug or alcohol treatment in order to continue their benefits.[333] Additionally, a conviction for unlawful practices in obtaining cash assistance will render a person ineligible for cash assistance under TANF, as determined by the sentencing court, for at least six months.[334] A felony drug conviction will not make a person ineligible for TANF benefits, but it may affect that person's ability to receive Disability Lifeline (DL) benefits.[335]

DL benefits are available for persons who meet DSHS requirements.[336] A person is eligible for benefits if they are pregnant, incapacitated,[337] in financial need (according to DL income and resource rules),[338] meet the citizenship/alien status requirements,[339] reside in the state of Washington,[340] and undergo referrals for assessment, treatment, or to other agencies.[341] A person is not eligible for DL if they are in the custody of or confined in a public institution such as a state penitentiary or county jail, in a work release program, or are serving home detention.[342]

"Fleeing felons"—persons who have a felony warrant out for their arrest—are ineligible for cash assistance and food assistance, including TANF, DL, and State Family Assistance (SFA). In order to be considered "fleeing," the person must act with intent to avoid prosecution or confinement; in other words, the person must have knowledge of his or her warrant.[343] Likewise, parole and probation violators are ineligible for cash assistance and food assistance under TANF, SFA, and DL.[344] A person is violating probation or parole when a court has issued an arrest warrant for them after being notified by the corrections officer that the person failed to comply with a requirement of probation or parole.[345]

Alongside criminal conviction ineligibility for many federal benefits, incarceration also affects a person's receipt of Supplemental Security

Income (SSI), Social Security Disability Insurance (SSDI), and veteran's benefits.[346] SSI payments continue until a person has been in jail or prison for a full calendar month.[347] SSDI payments continue until a person is convicted and has spent thirty days in jail or prison.[348] If an SSI recipient is incarcerated for more than twelve consecutive months, benefits will be terminated entirely, and the person will have to reapply for benefits upon release from custody.[349] SSDI recipients will not receive payments while they are incarcerated, yet they will not be terminated from the program no matter how long a period of incarceration. SSDI recipients must request a reinstatement of their cash benefits prior to or upon release from incarceration in order to start receiving them again.[350]

Benefits for veterans can also be impacted by a criminal conviction. While a conviction will not disenfranchise a person from the benefits that they are entitled to receive from the Veterans Administration (VA), a nonappearance at a court hearing or a violation of supervision may suspend benefits.[351] The VA suspends benefits for: (1) felony charges when there is an outstanding warrant; (2) felony convictions when there is an outstanding warrant; or (3) a violation of probation or parole when the underlying crime was a felony.[352] Out of all persons impacted by the "fleeing felon" rule, including veterans, the greatest effects fall on those persons who law enforcement has little interest in either pursuing or actively seeking to warrant enforcement upon.[353] As a result, it can be challenging to restore these benefits once a warrant is issued or a person falls out of compliance with supervision.

The most important thing that a criminal defense attorney can do when working with a client who relies significantly on government benefits is to speak with a civil legal service attorney who specializes in benefits.[354] As with consequences like immigration, it may be possible to mitigate the impact of the conviction on the ability of the client to continue to receive benefits. A carefully crafted plea, negotiated using the advice received from the civil legal services attorney, may make the difference in continuing to

be eligible for financial benefits. For "fleeing felony" issues, a criminal defense attorney may be successful in quashing warrants and restoring their client's status with supervision so that their client can begin to receive benefits again.

K. The Impact on Family Rights

What happens in a criminal court proceeding may adversely impact other cases that the client has pending, and frequently, these include family court proceedings.[355] Persons involved in criminal proceedings may also be involved in concurrent proceedings with DSHS, including dependency and termination of parental rights proceedings. Thus, the consequences of a criminal conviction can result in the loss of parental rights or the ability to foster or adopt a child.[356]

When a client has concurrent proceedings in another court, it is important to advise them that evidence may be obtained in these hearings, including statements made by the client in those proceedings. Criminal history, both conviction and nonconviction, may be admissible in dependency proceedings on the issue of parental fitness.[357]

Most important is the impact that the criminal proceedings can have on the family court matters. Certain felony convictions are considered "aggravated circumstances" that may result in "fast track" termination of parental rights.[358] Additionally, unless a modification is made, child support obligations continue to accrue while a person is incarcerated.[359]

Persons who provide foster care and are interested in adoption must also be aware of the impact that a conviction may have on their familial rights. The Washington Children's Administration performs background checks on all household members sixteen years and older who are not already foster children.[360] Certain criminal convictions of an applicant or an applicant's household member may preclude licensing for a period of time.[361] Under extremely rare circumstances, an administrative approval may be given when it is determined that the "conviction does not jeopardize the child's

health and safety and promotes long-term stability."[362] Other convictions, including violent crimes and crimes against children, act as a permanent disqualification.[363]

Adoptive parents must submit to a criminal background check as part of their "preplacement report" setting forth all relevant information relating to their fitness as an adoptive parent.[364] Criminal history information—which includes convictions, pending charges, and arrests less than a year old—may be included in the report, but it does not necessarily create an automatic bar to adoption.[365] Convictions that prohibit a person from becoming a licensed foster parent will also bar a person from adopting a child through DSHS.[366]

Overall, where concurrent proceedings are pending—especially where the client has an adoption or a license to foster children pending—it is important to consult with an attorney who works in family court to determine the best way to proceed on the criminal matter. As with all consequences, the outcome that will best match a family's needs may not be the most obvious one to an experienced criminal defense attorney. Where the issue is outside the experience area of the attorney handling the case, the best practice is to consult with counsel who has experience in that area.

L. Driver's License Restrictions

The ability to obtain a driver's license and lawfully operate a motor vehicle may also be affected by a conviction. For example, offenses involving operating a motor vehicle while under the influence of alcohol or controlled substances can result in a variety of suspensions and revocations depending upon the seriousness of the offense and the person's prior related criminal history.[367] Crimes that result in a suspension of at least one calendar year include vehicular homicide, vehicular assault, felonies involving a motor vehicle, failure to stop and give information or render aid, and perjury or the making of a false affidavit or statement under oath to the Department of Motor Vehicles relating to the ownership or operation of

motor vehicles.[368] Where a person is convicted of operating a motor vehicle without a license in either the first or second degree, their license suspension will be extended.[369]

Minors who are adjudicated or enter into diversion agreements on charges involving possession of alcohol, controlled substances, or firearms may also face mandatory license suspensions.[370] For a first offense as a juvenile, the suspension is until after his or her seventeenth birthday or one year, whichever is longer; for a second offense, it is until the juvenile's eighteenth birthday or for two years, whichever is longer.[371] These suspensions can run consecutively until the juvenile's twenty-first birthday.[372]

Likewise, a person who holds a commercial driver's license may have their ability to possess that license suspended or revoked for certain convictions.[373] Suspension of a commercial driver's license can last from one year for some offenses to life for others.[374]

Where a person is facing a suspension, they may be eligible for a temporary restricted license.[375] Persons who have been convicted of an alcohol offense may be eligible for an Ignition Interlock Driver's License (IIL)[376] requiring the operator to only drive a vehicle in which an interlock ignition device is installed. In fact, IILs have become mandatory for many convictions, including DUI offenses and deferred prosecutions for alcohol related incidents.[377] Frequently, an IIL license will be issued in conjunction with an Occupational/Restricted Driver License (ORL).[378] An ORL will enable a person who demonstrates need to have a temporary license issued.[379] "Need" can be demonstrated by showing that operating the motor vehicle is essential for work, school, court-ordered community service, substance abuse treatment, health care purposes, or applying to on the job training.[380]

Understanding when a license suspension or revocation will go into effect and for how long is important information for a defense attorney to be able to tell their client. As with all other consequences of a conviction, it

may be possible to mitigate or avoid these consequences through careful negotiation of the case. Attorneys who understand these rules and apply them during plea negotiations will do a good service to their clients.

M. Loss and Restoration of Civil Rights

A person who is convicted of a felony in Washington loses important civil rights upon conviction, including the right to vote and to serve on a jury. Other than voting rights, which may be restored earlier, a person's civil rights may not be restored until all sentencing requirements are fulfilled including paying all legal financial obligations.[381] It is important for a person who has decided to enter a guilty plea to understand these consequences and determine whether they are so important to them that they cannot agree to resolve the case short of trial.

The right to vote is denied to all persons under the authority of the DOC,[382] but it is provisionally restored when the person is no longer incarcerated.[383] As a result, a person may still owe legal financial obligations to the state, yet still be able to vote. The right to vote may be revoked where the sentencing court determines that the person has willfully failed to comply with the terms of his or her order to pay legal financial obligations.[384] The right to vote may be permanently restored where the restricted person has completed all their sentence obligations, including payment of their LFOs.[385] Restoration can be completed though a court order, a certificate of discharge issued by either the Governor or the sentencing court, or a final order of discharge issued by the ISRB.[386]

The right to serve on a jury is likewise denied to persons who have been convicted of a felony.[387] The law does not provide for provisional restoration of this right, meaning that a person must complete all of their sentencing obligations in order to have this right restored.[388] Once a person has had their civil rights restored, they may again be eligible for jury service.[389]

Certificates of discharge may be granted to persons who have completed all of their sentencing obligations, including the payment of legal financial obligations.[390] A person who is subject to a no-contact order may still receive a certificate of discharge if they have fulfilled all other obligations of their sentence.[391] A certificate of discharge shall have the effect of restoring all civil rights not already restored by RCW 29A.08.520.[392] Importantly, discharge will not relieve the person of obligations under no-contact orders or from their obligation to register with the state.[393]

The loss of some civil rights is an inevitable consequence of a conviction that, especially for felonies, cannot be avoided. As an advocate for your client, the important thing to do is to provide your client with information about what rights they will lose and the avenues that they must follow for restoration.

N. Federal Student Loans

Currently, the rules regarding federal student loans are fairly limited and will not apply to most persons.[394] Generally, if a student is not convicted while enrolled in college and on a student loan, there should be no denial of federal financial aid.[395] A student who is convicted of a drug offense while receiving financial aid may become ineligible to receive it any longer.[396] Nonetheless, a person who is found to be ineligible because of a drug conviction may have eligibility restored by attending a drug rehabilitation program.[397]

Rules for state financial aid may be different. Because the rules for student loan eligibility vary by state, an attorney looking to give advice on this consequence must research specific rules for the state in which their client is attending school.[398] It may be possible to craft a resolution that does not disqualify the student for the financial aid program in the state that gives them aid. For some clients, this may be an important part of the resolution of their cases.

An attorney with a client presently receiving financial aid should attempt to mitigate the impact of a drug conviction. It may be possible to craft a plea where the client can plead guilty to a reduced charge in exchange for more serious sanctions. Otherwise, the client could enter into an agreement with the state to complete certain conditions, like community service and a drug treatment program, to avoid a conviction. In the alternative, the defendant could enter into a court-monitored program—like drug court—that would result in the dismissal of charges to remain eligible for financial aid.[399]

O. Military Service

While each branch of the US military has the authority to make exceptions, a felony conviction will generally preclude entry into any military service.[400] Under current practice, the US Army may grant a waiver for certain adult felony convictions where all conditions of sentencing were completed over one year ago and for juvenile adjudications that are more than five years old.[401] The other branches of the military are unlikely to grant waivers, except where the applicant has less than two to three misdemeanor convictions.[402]

It is probably more important to deal with the issue of military service when the accused person is already serving in the military. Like immigration, the question of which offenses and what kind of sentences will or will not impact on the soldier's continuing ability to serve is complicated. In fact, providing affirmative misadvice on the loss of the right to serve in the military is one of the consequences that Washington has recognized as a basis for withdrawing a guilty plea.[403] In some cases, it may be advisable to accept a more serious charge that does not carry probation or a suspended sentence so that it will not impact a soldier's ability to take an assignment that involves traveling overseas.[404] When representing a soldier, it is best to consult with an attorney who specializes in military law.

P. Traveling Abroad

Any conviction in Washington may result in the denial of entry or issuance of an entry visa to another country for the convicted person. No country is obligated to admit foreign nationals, and denying entry for prior criminal history is not uncommon. The best practice when representing a person who has significant ties in another country is to consult with an immigration attorney who practices in that county and is familiar with the entry practices of that nation.

While it is extremely difficult to understand the rules of entry for every country in the world, it is useful for Washington attorneys to understand Canada's entry rules. Under Canadian law, a foreign national may be denied entry to Canada for "committing an act outside of Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament."[405] A conviction is not required, so admission may be denied to those who received dismissals after deferred prosecution or stipulated orders of continuance. Canada's "indictable" offenses include many offenses which are considered only misdemeanors in the United States, including DUIs.[406] Additionally, two or more convictions for offenses that are not "indictable" may be grounds for inadmissibility.[407]

Entry waivers into Canada are possible for persons with convictions that would otherwise be denied entry. A person may be "deemed rehabilitated" when they establish that their offense is over ten years old.[408] Persons with convictions between five and ten years old can also pay a fee and apply for "rehabilitation" through the Canadian consulate.[409] For convictions less than five years old, a person may apply for a temporary resident's permit.[410]

Members of a Native American tribe or a First Nation in Canada who wish to cross the border may be able to take advantage of the Jay Treaty, which gives them the right to cross the border between America and Canada without restriction.[411] Eligible persons must provide evidence of native heritage[412] sufficient to show that the bearer is at least 50 percent Native

American or First Nation heritage.[413] Qualified persons may then be admitted to the United States without a visa, unencumbered by typical immigration restrictions of the Immigration and Nationality Act, including the sections which bar admission of those with criminal convictions.[414]

While the ability to travel abroad is unlikely to be considered a drastic measure by the courts, it may still be an important consideration for some clients. If this is identified as an issue for a particular client, counsel should attempt to determine whether a particular disposition will result in exclusion from the country that the client is seeking to travel to. As with all consequences, it may not be possible to craft a resolution that accommodates this concern and other concerns of the client simultaneously. Nevertheless, the most important thing that an attorney can do is identify the issue for his or her client and inform them of the consequences so that they can make an informed decision with respect to their ability to travel.

IV. CONCLUSION

The obligation to provide competent representation existed well before *Padilla* clarified the rule regarding consequences that are intimately related to the criminal process and an integral part of the penalty.[415] Competent counsel must not only analyze the facts of their client's case and investigate appropriately, but counsel must also provide accurate advice regarding the consequences of a guilty plea or conviction. When an attorney ascertains their client's objectives for litigation and acts within those interests, he or she meets the obligations set by the Supreme Court in *Strickland* and *Padilla* as well as those affirmed in Washington in *A.N.J.* and *Sandoval*. The analysis for determining whether an attorney is effective with regard to the consequences of a conviction are no different than they are with regard to any other obligation expected of competent counsel. Competent counsel must understand the impact of the conviction on the client's objectives and seek a resolution that is in accord with those goals. Where the attorney properly advises a client with regard to consequences that are important to

him or her, the attorney has provided competent representation and satisfied the standard for effective assistance of counsel. It is then up to the defendant to determine the best course of action for their particular case.

In many cases, the consequences discussed in this article cannot be avoided. Often, it is up to the client to determine which of the adverse consequences they are confronting are acceptable to them in resolving their case. There may be circumstances where a client may agree to more incarceration to avoid certain other consequences such as deportation, registration, or the ability to continue to serve in the military. Where a consequence will have a drastic impact on a particular client's future, it may be in his or her best interest to spend more time in custody than to deal with that future impact. Ultimately, the role of competent counsel is to ensure that their client understands the impacts that a particular resolution will have on their future. When the client is fully informed with regard to those consequences, they have received effective assistance of counsel.

Courts must now analyze all consequences of a conviction under the standard laid out by *Padilla* and affirmed in *Sandoval*. Where the court finds that a consequence is "intimately related to the criminal process" and an "integral part of the penalty," yet the attorney failed to advise their client regarding the consequence, the court should apply the *Strickland* analysis to determine whether a valid claim of ineffective assistance exists. In many cases, the court may deny the claim upon a finding that prejudice was not established, even where the defendant is able to show that the consequence was an integral part of the penalty. In those circumstances, where the defendant is able to demonstrate prejudice and that the consequence was an integral part of the penalty, the client should be entitled to withdraw their plea, regardless of whether the consequence is a traditional direct or collateral consequence.[416] It is under these circumstances that the guarantees of the Sixth Amendment of the US Constitution and Article 1, sec. 22 of the Washington State Constitution are met.

[1] *See* Padilla v. Kentucky, 559 U.S.130 S. Ct. 1473, 1476 (2010).
[2] State v. Sandoval, 249 P.3d 1015, 1021 (Wash. 2011) (*citing* Strickland v. Wash., 466 U.S. 668, 688 (1984)); *see also* In re Pers. Restraint of Riley, 863 P.2d 554 (1993) (en banc).
[3] *Padilla*, 130 S. Ct. at 1480–81.
[4] *See* Sandoval, 249 P.3d at 1019.
[5] *See id.* at 1017; Padilla, 130 S. Ct. at 1478.
[6] *See* Padilla v. Kentucky, 559 U.S.130 S. Ct. 1473, 1481 (2010).
[7] *See id.*
[8] *See*, *e.g.*, Bauder v. Dep't of Corr. State of Fla., 619 F.3d 1272 (11th Cir. 2010) (finding affirmative representation of a client was ineffective assistance of counsel where the client would not expose himself to civil commitment as a result of a guilty plea); Commonwealth of Pa. v. Abraham, 996 A.2d 1090 (Pa. 2010) (finding that failure to warn a client that a plea deal would result in the loss of his pension benefits under the Public Employee Pension Forfeiture Act is ineffective assistance of counsel).
[9] *See* Bauder, 619 F.3d 1272.
[10] *See* Abraham, 996 A.2d 1090.
[11] Taylor v. State, 698 S.E.2d 384 (Ga. Ct. App. 2010) (constitutionally deficient for attorney not to advise his client that pleading guilty will make him subject to sex offender registration requirements).
[12] Webb v. State, 334 S.W.3d 126 (Mo. 2011) (ineffective assistance to failure to provide advice regarding parole eligibility); Frost v. State, CR-09-1037, 2011 WL 2094777 (Ala. Crim. App. May 27, 2011) (failure to inform client of ineligibility for parole constituted deficient performance); Pridham v. Com., 2008-CA-002190-MR, 2010 WL 4668961 (Ky. Ct. App. Nov. 19, 2010), *review granted* (May 11, 2011) (trial counsel's misadvice with respect to defendant's parole eligibility may constitute ineffective assistance of counsel).
[13] Stith v. State, CR-09-0754, 2011 WL 1604934 (Ala. Crim. App. Apr. 29, 2011) (Not yet released for publication) (failure to inform defendant that good time was not available for a Class A felony was ineffective assistance of counsel).
[14] *See* Abraham, 996 A.2d 1091; Bauder, 619 F.3d at 1273.
[15] Immigration consequences, for example, will only matter to a noncitizen client and will have no impact on the decision to plead guilty for a citizen. *See, e.g.,* State v. Sandoval, 249 P.3d 1015 (Wash. 2011). Forfeiture of a pension will have no impact on a person not entitled to receive a pension. *See, e.g.,* Abraham, 996 A.2d 1090.
[16] *See generally* Padilla v. Kentucky, 130 S. Ct. 1473, 1482 (2010).
[17] *Id.* at 1476.
[18] Strickland v. Wash., 466 U.S. 668, 686 (1984).
[19] Padilla, 130 S. Ct. at 1483.
[20] *See generally* Strickland v. Wash., 466 U.S. 668, 688 (1984).
[21] *See id.* at 694.
[22] *See* WASH. SUP. CT. CIV. R. 4.2(d); State v. Barton, 609 P.2d 1353, 1356 (Wash. 1980) (stating that a defendant "must be informed of all the direct consequences of his plea prior to acceptance of a guilty plea").

[23] *See generally* State v. Miller, 756 P.2d 122 (Wash. 1988).
[24] *See* In re Personal Restraint of Yim, 989 P.2d 512 (Wash. 1999) (holding that the defendant is not entitled to withdraw a guilty plea because of the immigration consequences where the defendant was not affirmatively misled); *see also* State v. A.N.J., 225 P.3d 956, 967 (Wash. 2010).
[25] *See id.*; *see also* Yim, 989 P.2d at 516.
[26] *See* In re Isadore, 88 P.3d 390, 392 (Wash. 2004) (en banc) (stating that failure to advise with regard to requirement of community placement is a direct consequence).
[27] *See* State v. Music, 698 P.2d 1087, 1091 (Wash. 1985).
[28] *See* In re Personal Restraint of Yim, 989 P.2d 516 (Wash. 1999). *See also* State v. Martinez-Lazo, 999 P.2d 1275, 1280 (Wash. 2000) ("Deportation remains a collateral consequence").
[29] *See* WASH. STATE BAR ASS'N, REPORT OF THE WSBA BLUE RIBBON PANEL ON CRIMINAL DEFENSE 1 (2004), http://www.wsba.org/lawyers/groups/blueribbonreport.pdf.
[30] Making Good on Gideon's Promise: Report on the Recommendations of the WSBA Committee on Public Defense As Adopted by the Board of Governors September 28, 56 (2007), *available at* http://www.wsba.org/lawyers/groups/committeeonpublic defense.htm.
[31] WASH. DEFENDER ASS'N, STANDARDS FOR PUBLIC DEFENSE SERVICES 4, 10–11, 56 (2007), http://www.defensenet.org/resources/publications-1/wda-standards-for-indigent-defense.
[32] For more information on the WSBA Council on Public Defense, see http://www.wsba.org/lawyers/groups/committeeonpublicdefense.htm.
[33] *See* WASH. REV. CODE § 10.101.005 (2011).
[34] *See* WASH. REV. CODE § 10.101.030 (2011).
[35] *See id*
[36] WASH. REV. CODE § 10.101.005 (2011).
[37] WASH. REV. CODE § 2.70.005 (2011).
[38] WASH. REV. CODE § 10.101.050 (2011).
[39] *See* State v. A.N.J., 225 P.3d 956, 966 (Wash. 2010); *see also* State v. Wilson, 181 P.3d 887, 892 (Wash. 2008) (reversing and remanding trial court's denial of defense attorney's request for appointment of co-counsel on serious felony case denied to an attorney who had been a member of the bar for only two years, had no felony trial experience, and did not have the experience necessary to be sole counsel, expressing concern for the "'thousands upon thousands upon thousands of dollars' Asotin County would have to pay if experienced counsel was appointed"). See also Best v. Grant County, Wash., No. 04-2-00189-0 (Wash. Nov. 2, 2004), finding that in 2005 the County's public defender system overworked its lawyers, failed to provide effective supervision, and allowed the Prosecutor's Office to interfere with funding for expert witnesses and investigators. The matter was subsequently settled by an agreement that resulted in a six-year monitor to ensure compliance with the settlement. *Id.*
[40] *See* Ken Armstrong et al., *Part 1: For Some, Free Counsel Comes at a High Cost*, SEATTLE TIMES, Apr. 4, 2004; Ken Armstrong et al., *Part 2: Attorney Profited, But His Clients Lost*, SEATTLE TIMES, Apr. 5, 2004; Ken Armstrong et al., *Part 3: Frustrated Attorney: 'You Just Can't Help People,'* SEATTLE TIMES, Apr. 6, 2004.

[41] At the time, King County was the only county in the state that had established standards for indigent defense services. *See* Ken Armstrong et al., *Part 3: Frustrated Attorney: 'You just can't help people,'* SEATTLE TIMES, Apr. 6, 2004.
[42] *See* Best v. Grant County, No. 04-2-00189-0, (Wash. Aug. 26, 2004); *see also* Press Release, American Civil Liberties Union, Grant County to Overhaul Defense System (Nov. 7, 2005), http://www.clearinghouse.net/chDocs/public/PD-WA-0001-0003.pdf.
[43] *See* Best v. Grant County, No. 04-2-00189-0, (Wash. Aug. 26, 2004); *see also* Press Release, American Civil Liberties Union, Grant County to Overhaul Defense System (Nov. 7, 2005), http://www.clearinghouse.net/chDocs/public/PD-WA-0001-0003.pdf..
[44] *See* Best v. Grant County, No. 04-2-00189-0, (Wash. Aug. 26, 2004); *see also* Press Release, American Civil Liberties Union, Grant County to Overhaul Defense System (Nov. 7, 2005), http://www.clearinghouse.net/chDocs/public/PD-WA-0001-0003.pdf.
[45] *See generally* State v. A.N.J., 225 P.3d 956 (Wash. 2010).
[46] *See* Gideon v. Wainwright, 372 U.S. 335 (1963) (requiring state appointed counsel for indigent persons in criminal proceedings).
[47] A.N.J., 225 P.3d at 960.
[48] *Id.* at 971.
[49] *Id.* at 973 (Sanders, J. concurring); *see also* State v. Sandoval, 249 P.3d 1015, 1020–21 (Wash. 2011).
[50] *A.N.J.* precedes *Padilla*, which is one of the reasons why the standard for ineffective assistance of counsel references misinformation, rather than affirmative advice. This is one of the issues that addressed in *Sandoval*, which overrules *In re Personal Restraint of Yim*.
[51] State v. A.N.J., 225 P.3d 956, 970 (Wash. 2010).
[52] *See* WASH. CRIM. R. LIMITED JURISDICTION 3.1(4). The amendment requiring certification will be effective in September 1, 2010.
[53] *See id.*
[54] *See* WSBA Board of Governors to Meet in Kennewick June 3 http://www.wsba.org/News-and-Events/News/BOG-June-Meeting; *see also* Council on Public Defense http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Council-on-Public-Defense
[55] *Id.*
[56] *See* Padilla v. Kentucky, 130 S. Ct. 1473, 1478 (2010).
[57] Fong Haw Tan v. Phelan, 333 U.S. 6 (1948).
[58] Padilla, 130 S. Ct. at 1478 (citing Fong Haw Tan, 333 U.S. at 10).
[59] *Id.*
[60] *Id.* at 1486.
[61] *Id.* at 1481.
[62] *See id.*
[63] *Id.* at 1476.
[64] *See id.* at 1481 (citing INS v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984)).
[65] Padilla v. Kentucky, 130 S. Ct. 1473, 1476, 1487 (2010).
[66] *See id.* at 1482.
[67] *Id.*
[68] *Id.* at 1481.

[69] State v. Sandoval, 249 P.3d 1015, 1017 (Wash. 2011).
[70] *Id.*
[71] *Id.* at 1021 (citing Strickland v. Wash., 466 U.S. 668, 688. (1984)).
[72] *Id.*
[73] *Id.* at 1021 n.3 (citing Padilla v. Kentucky, 130 S. Ct. 1473, 1486 (2010)).
[74] *Id.*
[75] Padilla, 130 S. Ct. at 1477.
[76] *Id.* at 1483 (citing INS v. St. Cyr, 533 U.S. 289, 323 (2001)).
[77] State v. Sandoval, 249 P.3d 1015, 1021 (Wash. 2011).
[78] *See* Commonwealth of Pa. v. Abraham, 996 A.2d 1090 (Pa. 2010); Bauder v. Dept. of Corr. State of Fla., 619 F.3d 1272 (11th Cir.) (2010).
[79] *See* Abraham, 996 A.2d at 1092.
[80] *See* Taylor, 698 S.E.2d 384.
[81] Bauder, 619 F.3d at 1273.
[82] *See* Webb v. State, 334 S.W.3d 126 (Mo. 2011) (parole eligibility); Frost v. State, CR-09-1037, 2011 WL 2094777 (Ala. Crim. App. May 27, 2011) (parole eligibility); Pridham v. Com., 2008-CA-002190-MR, 2010 WL 4668961 (Ky. Ct. App. Nov. 19, 2010), *review granted* (May 11, 2011) (parole eligibility); Stith v. State, CR-09-0754, 2011 WL 1604934 (Ala. Crim. App. Apr. 29, 2011) (Not yet released for publication) (good time eligibility).
[83] A complete discussion of these issues will be addressed more completely below *infra* §§ III (G), (K), (M), and (O).
[84] *See, e.g.*, Padilla v. Kentucky, 130 S. Ct. 1473, 1480 (2010).
[85] *Id.*
[86] *See generally* WASH. DEFENDER ASS'N., BEYOND THE CONVICTION: WHAT DEFENSE ATTORNEYS IN WASHINGTON NEED TO KNOW ABOUT COLLATERAL AND OTHER NON-CONFINEMENT CONSEQUENCES (2010); *available at* http://www.defensenet.org, follow "Resources," click on "Publications."
[87] *See* Padilla v. Kentucky, 130 S. Ct. 1473, 1481 (2010) ("[N]oncitizen defendants facing a risk of deportation for a particular offense find it even more difficult" to separate the penalty for conviction from deportation); *see also* State v. Sandoval, 249 P.3d 1015, 1017 (Wash. 2011) (The defendant "did not want to plead guilty if the plea would result in his deportation.").
[88] Padilla, 130 S. Ct. at 1480.
[89] *See id* at 1481 ("We, however, have never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under *Strickland*.").
[90] *See id*
[91] *Id.* at 1482, 1486.
[92] *Id.* at 1476.
[93] *Id.* at 1484 (stating that to limit the holding to affirmative misadvice would "invite absurd . . . results").
[94] *See id* at 1483.
[95] *Id.*
[96] State v. Sandoval, 249 P.3d 1015, 1021 (Wash. 2011).

[97] *Id.* at 1022 (citing Delgadillo v. Carmichael, 332 U.S. 388, 390–91 (1947)).
[98] *Id.* (citing Padilla v. Kentucky, 130 S. Ct. 1473, 1484 (2010)).
[99] *See id.*
[100] Padilla v. Kentucky, 130 S. Ct. 1473, 1483 (2010).
[101] For an in-depth discussion of these models, see SEJAL ZOTA & JOHN RUBIN, IMMIGRATION ASSISTANCE FOR INDIGENT DEFENDERS (AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY OCTOBER 2010) *available at* http://www.acslaw.org/files/Zota%20Rubin%20-%20Immigration%20Assistance.pdf.
[102] Detailed overview of the resources provided by WDA's Immigration Project *available at* http://www.defensenet.org/immigration-project.
[103] *See id.*
[104] *But see* Padilla, 130 S. Ct. at 1483; State v. Sandoval, 249 P.3d 1015, 1022 (Wash. 2011) ("We think Sandoval would have been rational to take his chances at trial.").
[105] A guilty plea is involuntary if the defendant is not properly advised of a direct consequence of his plea. *See* State v. Turlev, 69 P.3d 338, 341 (Wash. 2003); State v. Ross, 916 P.2d 405, 408 (Wash. 1996); *see also* In re the Personal Restraint of Isadore, 88 P.3d 390, 392 (Wash. 2004) ("A guilty plea is not knowingly made when it is based on misinformation of sentencing consequences.")
[106] *Compare* Padilla v. Kentucky, 130 S. Ct. 1473, 1483 (2010); *with* Sandoval, 249 P.3d at 1022 ("We think Sandoval would have been rational to take his chances at trial."). Other consequences that may matter more than the length of the sentence to a particular person will be discussed in detail below.
[107] *See* Turlev, 69 P.3d at 341; Ross, 916 P.2d at 408; *see also* In re the Personal Restraint of Isadore, 88 P.3d at 392.
[108] WASH. REV. CODE § 9.94A governs sentencing of felony offenses; *See* WASH. REV. CODE § 9.94A.010 (2011).
[109] The Sentencing Reform Act is codified in WASH. REV. CODE §§ 9.94A.010–9.94A.930 (2011). The Washington State Sentencing Guidelines Commission maintains the present and all past manuals online. *See Publications*, WASH. STATE SENTENCING GUIDELINES COMM'N, http://www.sgc.wa.gov/Informational/Publications.htm (last visited Mar. 27, 2011).
[110] The maximum sentence for a gross misdemeanor is 365 days. WASH. REV. CODE § 9A.20.021(3) (2011). The maximum sentence for a misdemeanor is ninety days. WASH. REV. CODE § 9A.20.021(4) (2011).
[111] WASH. REV. CODE § 9.94A.535 (2011).
[112] A complete list of the seriousness level for each felony can be found at WASH. REV. CODE § 9.94A.515 (2011).
[113] *See* WASH. REV. CODE § 9.94A.030(14)(11)(a) (2011) (including the defendant's prior adult convictions and juvenile court dispositions in any state or in federal court as a part of a defendant's criminal history).
[114] *See* WASH. REV. CODE § 9.94A.535 (2011).
[115] *See* WASH. REV. CODE § 9.94A.537(6) (2011); *see also* Blakely v. Wash., 542 U.S. 296, 301 (2004) ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the proscribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.").

[116] Sentence enhancements may be based upon possession of a firearm or deadly weapon, criminal street gang activity, whether the crime was committed in a protected zone, the presence of a child and when the crime is for sexual motivation. *See* WASH. REV. CODE § 9.94A.533 (2011).
[117] *See* WASH. REV. CODE § 9.94A.537(3) (2011). An exclusive list of aggravating factors can be found at WASH. REV. CODE § 9.94.535(2)–(3) (2011).
[118] *See* WASH. REV. CODE § 9.94A.535(1) (2011).
[119] *See* WASH. REV. CODE § 9.94A.507(3)(b) (2011).
[120] *See* WASH. REV. CODE § 9.94A.570 (2011).
[121] *See generally* WASH. REV. CODE § 9.94A.507 (2011).
[122] *See generally* WASH. REV. CODE § 9.94A.507(3)(b) (2011).
[123] *See* WASH. REV. CODE § 9.94A.507(c)(i) (2011).
[124] *See* WASH. REV. CODE § 9.94A.030(36) (2011) (defining "persistent offender"). "Three Strikes and You're Out" was approved by voters in 1993 and became effective on December 2, 1993. The "Two Strike" law was enacted by the 1997 legislature.
[125] *See* WASH. REV. CODE § 9.94A.570 (2011).
[126] *See* WASH. REV. CODE § 9.94A.030(31) (2011).
[127] *See* WASH. REV. CODE § 9.94A.030(34) (2011).
[128] *See* WASH. REV. CODE § 9.94A.030(36)(b) (2011).
[129] *See* WASH. REV. CODE § 9.94A.570 (2011).
[130] *See* WASH. REV. CODE § 9.94A.729(1) (2011).
[131] An offense committed after July 1, 2003, that results in a conviction for a serious violent offense or a class A felony sex offense may entitle the offender to receive no more than ten percent good time. WASH. REV. CODE § 9.94A.729(3)(a) (2011); *see also* WASH. REV. CODE § 9.94A.729(3)(d) (2011) (stating that under no circumstances shall "shall the aggregate earned release time exceed one-third of the total sentence."). For offences committed on or after July 1, 1990, and before July 1, 2003, earned release time for these offenses may be up to fifteen percent.
[132] *See* WASH. REV. CODE § 9.94A.729(5)(b) (2011). Where the DOC is unable to approve the release plan, it may transfer the offender to partial confinement or provide rental vouchers, if they will result in an approved release plan. *See* WASH. REV. CODE § 9.94A.729(5)(d)(i)–(ii) (2011).
[133] *See* WASH. REV. CODE § 9.94A.729(2) (2011).
[134] *See* WASH. REV. CODE §§ 9.94A.729(1)(a)–(b) (2011); *see also* WASH. REV. CODE § 9.92.151 (Early 2011) (early release for good behavior).
[135] *See* WASH. REV. CODE § 9.94A.729(1)(b) (2011).
[136] *See* WASH. REV. CODE § 9A.20.021(2)–(3) (2011) (applying to crimes committed July 1, 1984 and after); WASH. REV. CODE § 9.92.020 (2011) (gross misdemeanors); WASH. REV. CODE § 9.92.030 (2011) (misdemeanors).
[137] *See* WASH. REV. CODE § 9A.20.021(2)–(3) (2011).
[138] *See* WASH. REV. CODE § 3.66.067 (2011).
[139] *See* WASH. REV. CODE § 3.66.069 (2011).
[140] *See* In re the Personal Restraint of Isadore, 88 P.3d 390, 392 (Wash. 2004).
[141] *See id.*
[142] *See* WASH. REV. CODE § 9.94A.501(1) (2011).

[143] WASH. REV. CODE § 9.94A.701–704 (2011).
[144] Supervision is mandatory for some superior court misdemeanors and gross misdemeanors sentences requiring probation, sex offenses (felony or misdemeanor), serious violent offenses, dangerous mentally ill offenders, those under the jurisdiction of the Indeterminate Sentence Review Board, those subject to the Interstate Compact, offenders sentenced under the Drug Offender Sentencing Alternative, those under the Special Sex Offender Sentencing Alternative, or the First time Offender Waiver. WASH. REV. CODE § 9.94A.501 (2011).
[145] *See id.*
[146] Supervision for sex and serious violent offenders is thirty-six months. For violent offenders it is eighteen months. For persons convicted of crimes against persons, drug offenses, and offenses involving unlawful possession of a firearm by a gang member, supervision is for twelve months. WASH. REV. CODE § 9.94A.701 (2011).
[147] Supervision for a misdemeanor may be for up to five years, depending upon the offense. *See* WASH. REV. CODE § 9.95A.204 (2011).
[148] For a full list of the conditions which a court may impose see WASH. REV. CODE § 9.94A.703 (2011).
[149] *See* WASH. REV. CODE § 9.94A.714. (2011).
[150] Before the enactment of the SRA, for offenses that occurred prior to July 1, 1984, all persons convicted of felonies in Washington were sentenced under the indeterminate sentencing system. Persons were given a maximum sentence by the court at the time of sentencing. The ISRB then set a minimum sentence, at which time the offender could be considered for release. Where the ISRB finds a person "rehabilitated and a fit subject for release," WASH. REV. CODE § 9.95.100, parole can be authorized. If the board does not release the person at that hearing, a new hearing must be set within sixty months. There is no right to release until the expiration of the maximum sentence imposed.
[151] WASH. REV. CODE § 9.95.011(2). The SRA does not apply to crimes that were committed prior to July 1, 1984. WASH. REV. CODE § 9.94A.905.
[152] *See generally* WASH. REV. CODE § 9.94A.507 (2011).
[153] *See* WASH. REV. CODE § 9.95.011(2)(b) (2011).
[154] WASH. REV. CODE § 9.94A.507. (2011).
[155] *See* INDETERMINATE SENTENCE REVIEW BD., INDETERMINATE SENTENCE REVIEW BOARD AT A GLANCE (2010), http://www.srb.wa.gov/documents/ISRB%20AT%20A%20GLANCE.pdf (indicating that those serving determinate plus sentences are slightly more likely to be released than offenders serving sentences for offenses which occurred prior to July 1, 1984).
[156] In setting a new minimum term, the board may consider the length of time necessary for the offender to complete treatment and programming as well as other factors that relate to the offender's release under WASH. REV. CODE § 9.95.420. The board's rules shall permit an offender to petition for an earlier review if circumstances change or the board receives new information that would warrant an earlier review. *See* WASH. REV. CODE § 9.95.011(2)(c) (2011).
[157] *See* WASH. REV. CODE § 9.95.011(2)(b) (2011).
[158] *See* WASH. REV. CODE § 9A.44.130 (2011) for a list of the offenses requiring registration.

[159] *See generally* Kevin Brown, et al., *The Reintegration of Sex Offenders: Barriers and Opportunities for Employment*, 46 HOWARD J. CRIM. JUST. 32 (2007).
[160] *See generally* Jill Levenson & Leo Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd?*, 49(2) INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 168 (2005).
[161] *See generally* State v. A.N.J., 225 P.3d 956, 968 (Wash. 2010). While *A.N.J.* relies upon affirmative misadvice, this rule predates *Sandoval*, which extends the rule for immigration advice to requiring affirmative advice. *See also* State v. Stowe, 858 P.2d 267, 270 (Wash. 1993) (When there are "additional consequences of an unquestionable serious nature . . . .it may be manifestly unjust to hold the defendant to his earlier bargain.").
[162] *See* Brown, *supra* note 153; Levenson & Cotter, *supra* note 154.
[163] *See* E.K. DRAKE & S. AOS, DOES SEX OFFENDER REGISTRATION AND NOTIFICATION REDUCE CRIME? A SYSTEMATIC REVIEW OF THE RESEARCH LITERATURE (2009), http://www.wsipp.wa.gov/rptfiles/09-06-1101.pdf. The Washington State Institute for Public Policy has done considerable work on the issue of the effectiveness of registration on sex offender policy, including this meta-analysis.
[164] *See* WASH. REV. CODE § 9A.44.130(1)(a) (2011).
[165] *See* WASH. REV. CODE § 9A.44.130 (2011). Classification is from Level I to Level III, with Level III being the most likely to reoffend.
[166] *See* WASH. REV. CODE § 4.24.550(53) (2011).
[167] *See id.*
[168] *See id.* The Department of Corrections also has useful information, including the risk assessment tool on their website. *See generally End of Sentence Review Comm.*, WASH. STATE DEP'T OF CORRECTIONS, http://www.doc.wa.gov/community/sexoffenders/endofsentence.asp (last visited Mar. 27, 2011).
[169] Failure to register as a sex offender is also an additional sex offense. *See* WASH. REV. CODE § 9A.44.132 (2011); WASH. REV. CODE § 9A.44.140 (2011).
[170] *See generally* WASH. REV. CODE § 9A.44.140 (2011); WASH. REV. CODE § 9A.44.142 (2011).
[171] *See* WASH. REV. CODE § 9A.44.142(1)(b) (2011).
[172] *See* WASH. REV. CODE § 9A.44.140(2) (2011).
[173] *See* WASH. REV. CODE § 9A.44.140(1) (2011).
[174] WASH. REV. CODE § 9A.44.143(1) (2011).
[175] *Id.*
[176] *Id.*
[177] *Id.*
[178] *Id.*
[179] *See* State v. A.N.J., 225 P.3d 956, 968 (2010).
[180] *See id*
[181] *Id.*
[182] *See id*
[183] Padilla v. Kentucky, 130 S. Ct. 1473, 1484 (2010) (stating that there is no relevant difference "between an act of commission and an act of omission"); *see also* Strickland v.

Wash., 466 U.S. 668, 690 ("The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.").

[184] *See* State v. Sandoval, 249 P.3d 1015, 1022 (Wash. 2011) ("Given the severity of the deportation consequence, we think Sandoval would have been rational to take his chances at trial.").

[185] *See generally* Patricia M. Harris & Kimberly S. Keller, 2005, *Ex-Offenders Need Not Apply: The Criminal Background Check in Hiring Decisions*," 21 J. CONT. CRIM. JUST 6 (2005).

[186] *See Crime & Safety*, WASH. STATE PATROL, http://www.wsp.wa.gov/crime/crimhist.htm (last visited Mar. 27, 2011).

[187] *See* WASH. REV. CODE § 10.97.045 (2011).

[188] *See* WASH. REV. CODE § 10.97.050 (2011). Many state agencies, including criminal justice agencies and DHSH, have free access to all criminal history information, including all past arrests. *See generally* WASH. REV. CODE § 10.97.100 (2011).

[189] *See* WASH. REV. CODE § § 43.43.730; 10.97.080 (2011).

[190] Only nonconviction data may be expunged or destroyed as there is no provision that allows for the expungement or destruction of an adult conviction record. *See* WASH. REV. CODE § 10.97.030(2) (2011) (defining "nonconviction data"); WASH. REV. CODE § 10.97.060. (2011).

[191] *See* WASH. REV. CODE §§ 9.95.240, 9.94A.640(3) (2011).

[192] WASH. CT. R. GENERAL APPLICATION 15(c)(2).

[193] *See* Koenig v. Thurston County, 229 P.3d 910 (Wash. 2010) (holding that Special Sex Offender Sentencing Alternative evaluations are not exempt from Public Records Act disclosure, even where the court copy had been placed under seal).

[194] *See generally* WASH. REV. CODE § 9.94A.030(48) (2011) (defining violent crimes); WASH. REV. CODE § 43.43.830(5) (2011) (defining crimes against children and other persons).

[195] *See generally* WASH. REV. CODE § 9.94A.640(2) (2011).

[196] *See id.*

[197] *See* WASH. REV. CODE § 9.96.060 (2011).

[198] *See* WASH. REV. CODE § 9.96.060(2)(a) (2011).

[199] Vacation is not available for misdemeanor and gross misdemeanor DUIs, sex offenses, obscenity or pornography charges under WASH. REV. CODE §§ 9.68.15–9.68.140, sexual exploitation of children under WASH. REV. CODE §§ 9.68A.001–9.68A.150, or violent offenses or attempt to commit violent offenses under WASH. REV. CODE § 9.94A.030.

[200] *See* WASH. REV. CODE § 13.50.050(12) (2011).

[201] *See id.*

[202] *See id.*

[203] *See* WASH. REV. CODE § 19.182.040(1) (2011). Generally, no consumer reporting agency may make a consumer report containing any juvenile records, as defined in RCW 13.50.010(1)(c), when the subject of the records is twenty-one years of age or older at the time of the report.

[204] *See generally* WASH. REV. CODE § 10.97.050 (2011).

[205] *See generally* WASH. REV. CODE § 10.97.030(2) (2011).

[206] *See* WASH. REV. CODE § 10.97.060 (2011).
[207] *See generally* WASH. CT. GENERAL R. 15.
[208] WASH. REV. CODE § 10.97.050 (2011).
[209] Washington Law Help maintains a current guide on steps to take to vacate or seal a conviction. See *Washington Law Help, Criminal History/Records: A Guide on When and How to Vacate Non-Violent Class B or C Felony Convictions Occurring on or after July 1, 1984* at 1, http://www.washingtonlawhelp.org/documents/1988619910EN.pdf?stateabbrev=/WA/.
[210] *See generally* State v. A.N.J., 225 P.3d 956, 969 (2010) ("A conviction as a juvenile sex offender will have a significant impact on his life.").
[211] *See generally* Eric Holte & Travis Stearns, *A Public Defender's Guide to Legal Financial Obligations in Superior Court* (2010), http://www.washingtonlawhelp.org/documents/472631WDAGuidetoLegalFinancialObligationsLFOs.pdf?stateabbrev=/wa/ (providing for a more complete analysis of legal financial obligations).
[212] *See generally* WASH. REV. CODE § 9.94A.760 (2011).
[213] *See id.* Under current law, superior court judges may now impose up to seventeen fees and fines on felony defendants at the time of sentencing. District court may also impose fines and fees, in addition to restitution.
[214] *See* WASH. REV. CODE § 7.68.035 (2011).
[215] *See* WASH. REV. CODE § 43.43.7541 (2011).
[216] *See* KATHERINE BECKETT, ET AL., WASH. STATE MINORITY AND JUSTICE COMM., THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE 3 (2008), http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf; *see also* ALICIA BANNON, Diller, ET AL., CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY (2010), http://brennan.3cdn.net/c610802495d901dac3_76m6vqhpy.pdf.
[217] AMERICAN CIVIL LIBERTIES UNION, IN FOR A PENNY: THE RISE OF AMERICA'S NEW DEBTORS' PRISONS 6 (2010), http://www.aclu.org/files/assets/InForAPenny_web.pdf#page=6.
[218] BECKETT, *supra* note 205, at 11.
[219] *Id.*
[220] *See* WASH. REV. CODE § 10.82.090 (2011).
[221] WASH. REV. CODE § 10.82.0090(2) (2011) allows the court to reduce or waive interest on LFOs if the offender has shown that he or she has "personally made a good faith effort to pay, that the interest accrual is causing a significant hardship, and that he or she will be unable to pay the principal and interest in full" and that "reduction or waiver of the interest will likely enable the offender to pay the full principal and any remaining interest." A "good faith effort" means payment of the principal in full or twenty-four consecutive monthly payments, excluding payments mandatorily deducted by DOC. The court may not *waive* interest on the restitution portion of the LFO and may only *reduce* it if the principal of the restitution has been paid in full.
[222] *See* WASH. REV. CODE § 9.94A.753(3) (2011).
[223] *See id.*
[224] *See id*
[225] *See id.*

[226] *See id.*
[227] *See* WASH. REV. CODE § 9.94A.753(5) (2011).
[228] *See* WASH. REV. CODE § 13.40.200 (2011).
[229] *See* WASH. REV. CODE § 9A.20.021 (2011).
[230] *See* WASH. REV. CODE § 9.94A.550 (2011).
[231] *Id.*
[232] *Id.*
[233] *See* WASH. REV. CODE § 9A.20.021 (2011).
[234] *See generally* WASH. REV. CODE § 9.94A.760 (2011).
[235] *See* WASH. REV. CODE § 43.43.690 (2011).
[236] WASH. REV. CODE § 7.68.035 (2011).
[237] WASH. REV. CODE § 10.01.160(3) (2011).
[238] *See* Fuller v. Oregon, 417 U.S. 40, 45 (1974); State v. Barklind, 557 P.2d 314, 317 (Wash. 1977).
[239] Where restitution has been imposed, it may not be later waived by a court.
[240] WASH. REV. CODE § 10.01.160(4) (2011). Due process also precludes the jailing of a person for failure to pay his or her fine if that person's failure to pay was due to his or her indigence. *See* Smith v. Whatcom Cnty. Dist. Ct., 52 P.3d 485, 492 (Wash. 2002) citing Bearden v. Ga., 461 U.S. 660, 672–73 (1983).
[241] *See* Fuller, 417 U.S. at 46; *see also* State v. Curry, 829 P.2d 166, 168–69 (Wash. 1992).
[242] *See* Fuller, 417 U.S. at 46.
[243] *See id.* Following *Fuller*, the Oregon court explicitly declared that the remission statute at issue in *Fuller* (which is practically identical to WASH. REV. CODE § 10.01.160) required a manifest hardship analysis and that the test employed at sentencing to decide whether LFOs should be part of a sentence was "inapposite by its terms." Hernandez-Reyes v. Lampert, 35 P.3d 1066, 1068 (Or. 2001); *see also* Barklind, 557 P.2d at 317, *but cf.* State v. Blank, 930 P.2d 1213, 1316 (Wash. 1997) (analyzing WASH. REV. CODE § 10.73.160(4) regarding remission of appellate costs and explaining that the consideration of remission requires a manifest hardship test based on the circumstances of the movant at the time of the remission motion).
[244] Fuller v. Oregon, 417 U.S. 40, 53 (1974).
[245] *See generally* WASH. REV. CODE § 10.101.020 (2011).
[246] *See* WASH. REV. CODE § 9.94A.760 (2011).
[247] *See id*
[248] Wash. v. Nason, 233 P.3d 848, 851 (Wash. 2010).
[249] Bearden v. Ga., 461 U.S. 660, 660 (1983).
[250] *See* WASH. REV. CODE § 9.94B.040(3)(b) (2011); *see* Smith v. Whatcom Cnty Dist. Ct., 52 P.3d 485, 492 (2002).
[251] *See* Smith, 52 P.3d at 492.
[252] State v. Blank, 930 P.2d 1213, 1220 (Wash. 1997).
[253] *See* WASH. REV. CODE § 9.94A.633 (2011).
[254] *See generally* Alexes Harris, et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary U.S.*, 115 AM. J. SOC. 1755 (2010).

[255] *See* D.C. v. Heller, 554 U.S. 570 (2008) (holding that the Second Amendment protects an individual's right to possess a firearm for private use); McDonald v. Chi., 130 S. Ct. 3020 (2010) (holding that the right to keep and bear arms is incorporated by the Due Process Clause of the Fourteenth Amendment and applies to the States).
[256] *But cf.* Padilla v. Kentucky, 130 S. Ct. 1473 (2010) (Sixth Amendment right to effective assistance of counsel regarding immigration consequences of a guilty plea); *Heller*, 554 U.S. 570 (Second Amendment right to possess firearms).
[257] *See* WASH. REV. CODE § 9.41.040 (2011) (unlawful possession of a firearm); WASH. REV. CODE § 9.41.045 (2011) (firearm possession by an offender); WASH. REV. CODE § 9.41.047 (2011) (restoration of possession rights).
[258] *See* WASH. REV. CODE § 9.41.040 (2011); WASH. REV. CODE § 9.41.047 (2011).
[259] *See* 18 U.S.C. § 922(g)(9) (2002).
[260] *See* 18 U.S.C. § 922(g) (2002).
[261] *See generally* 18 U.S.C. § 922 (2002).
[262] 18 U.S.C. § 921(a)(20) (2002).
[263] *See generally* 18 U.S.C. § 922. (2002).
[264] *See* WASH. REV. CODE § 9.41.040047 (2011). A person may have their right to possess a firearm restored without having other civil rights restored under a certificate of discharge. Restoration of firearm rights is based upon time spent crime free and not upon completion of the obligations under a sentence. WASH. REV. CODE § 9.41.040 (2011). *See also* State v. Mihali, 218 P.3d 922 (Wash. 2009).
[265] *See* WASH. REV. CODE § 9.94.040(4)(b)(i) (2011).
[266] *See* WASH. REV. CODE § 9.41.040(4)(b)(ii) (2011).
[267] 18 U.S.C. § 925(c). *But see* U.S. v. Bean, 537 U.S. 71 (2002) (The federal district court had no authority to restore petitioner's right to possess firearms even where Congress has refused to provide a process through the ATF for restoration of rights).
[268] WASH. REV. CODE § 9.94.040(b)(i) (2011).
[269] *See* 18 U.S.C. § 922(g) (2002) (domestic violence charges). *But see* WASH. REV. CODE § 9.94.040(4)(b)(i) (2011) (general restoration rights for felons).
[270] Notification is included in the pattern Guilty Plea Form maintained by the Washington Courts. *See Court Forms: Guilty Pleas*, WASH. COURTS, http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=21 (last visited Mar. 28, 2011).
[271] *See* AMY L. SOLOMON, ET AL., FROM PRISON TO WORK: THE EMPLOYMENT DIMENSIONS OF PRISONER REENTRY, A REPORT OF THE REENTRY ROUNDTABLE 20–28 (2004).
[272] HARRY HOLZER, WHAT EMPLOYERS WANT: JOB PROSPECTS FOR LESS-EDUCATED WORKERS 123 (1996).
[273] *See also* WASH. REV. CODE § 9.96A.020 (2011) (prior felony convictions not disqualification for state employment and exceptions).
[274] *See* WASH. REV. CODE § 43.43.832(3) (2011).
[275] *See* WASH. REV. CODE § 43.43.830(5) (2011). This includes, among other crimes, assault in the fourth degree.
[276] *See* WASH. REV. CODE § 43.43.842 (2011) (licensing requirements for agencies and facilities serving vulnerable adults); WASH. ADMIN. CODE 388-97-1820 (2011) (disqualification from nursing home employment); WASH. ADMIN. CODE 388-76-10015

(2011) (adult family homes); WASH. ADMIN. CODE 388-06-0170 (2011) (criminal convictions permanently prohibiting access to children).
[277] *See* WASH. REV. CODE § 43.43.830(7) (2011) (including theft in the third degree).
[278] *See* WASH. REV. CODE § 43.43.842(1)(a) (2011).
[279] *See* WASH. REV. CODE §§ 43.43.842(2)(a)–(e) (2011).
[280] *See* WASH. ADMIN. CODE § 388-06-0170 (2011).
[281] *See* WASH. ADMIN. CODE § 388-06-0180 (2011).
[282] *See* WASH. REV. CODE § 28A.400.320 (2011) (mandatory termination of school employees); WASH. REV. CODE § 28A.400.330 (2011) (termination of school contractors); WASH. ADMIN. CODE § 392-144-101 (2011) (employment requirements of school bus drivers).
[283] *See* WASH. REV. CODE § 28A.400.303 (2011).
[284] *See* WASH. REV. CODE § 28A.400.320 (school employees); WASH. REV. CODE § 28A.400.330 (2011) (school contractors); WASH. ADMIN. CODE § 392-144-101 (2011) (school bus drivers).
[285] *See* WASH. ADMIN. CODE 181-86-013 (2011).
[286] WASH. REV. CODE § 28A.320.155 (2011)
[287] *See* WASH. ADMIN. CODE § 139-05-220 (2011).
[288] *See* WASH. ADMIN. CODE § 204-91A-060 (2011).
[289] *See* WASH. ADMIN. CODE § 204-93-040 (2011).
[290] *See* WASH. REV. CODE § 72.05.440 (2011).
[291] *See* WASH. REV. CODE § 9.96A.020 (2011); *see also* Standow v. City of Spokane, 564 P.2d 1145 (Wash. 1977), *appeal dismissed*, 434 U.S. 992 (1977) (No. 77-5329).
[292] See 12 U.S.C. § 1829(a)(21)(A) (2006) as amended by Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010).
[293] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010).
[294] *See* 18 U.S.C. § 1033(e)(2) (1994).
[295] *See* 29 U.S.C. § 504 (1987).
[296] *See* 42 U.S.C. § 1320a-7(a) (2010).
[297] *See* 21 U.S.C. § 335a(a)(2) (2002).
[298] *See* 42 U.S.C. § 13726b(b)(1) (2000).
[299] *See* 49 U.S.C. § 44935 (2002); 49 U.S.C. § 44936(b)(1)(B) (2011).
[300] *See, e.g.*, WASH. REV. CODE § 28A.400.320 (2011); WASH. ADMIN. CODE § 139-05-220 (2011). *But see* WASH. REV. CODE § 46.20.391 (2011) (occupational licenses).
[301] *See* WASH. ADMIN. CODE 162-12-140(3)(b) (2011).
[302] *See id*
[303] *See generally* WASH. REV. CODE §§ 49.60 .010–505 (2011); WASH. ADMIN. CODE § 162-12-140(3)(d) (2011). Federal courts have found that a policy of asking about criminal records has a "disparate impact" on African Americans and Hispanics. *See, e.g.*, Green v. Missouri Pacific Railroad Company, 549 F.2d 1158 (8th Cir. 1977). African Americans and Hispanics who have been denied employment based on their criminal history record may have a basis for a Title VII claim with the Equal Employment Opportunity Commission.

[304] *See* WASH. STATE EMP'T SEC. DEP'T, WASHINGTON STATE EMPLOYMENT RE-ENTRY GUIDE: NEW DIRECTIONS 65–66 (2010), *available at* http://www.wa.gov/esd/oes/docs/ReEntryGuide8-30.pdf.
[305] The Center for Housing Policy found that two-thirds of ex-offenders who lacked appropriate housing after release recommitted crimes within the first twelve months of going free, while one-fourth of those with housing re-offended in the same time frame. Lornet Turnbull, *Few rentals for freed felons*, SEATTLE TIMES, Nov. 29, 2010.
[306] *See* Fair Housing Act, 42 U.S.C. § 3604 (1988) (failing to include criminal history as a protected class).
[307] *See* Consent Decree at 4, Alvera v. C.B.M. Group, No. CV 01–857–PA (D. Or. 2001) (denying housing to victims of domestic violence has disparate impact on women and as such constitutes unlawful sex discrimination).
[308] *See* US Dep't of Hous. and Urban Dev. Fair Hous. Act, 24 C.F.R. § 100.201(a)(2) (2008).
[309] *See* WASH. REV. CODE § 59.18.130(6) (2011).
[310] *See id*
[311] *See* WASH. REV. CODE § 59.16.010 (2011) (unlawful detainer), WASH. REV. CODE §§ 59.18.010–012 (2011) (Residential Landlord-Tenant Act).
[312] *See* WASH. REV. CODE § 59.18.130(6)(9) (2011).
[313] *See* WASH. REV. CODE § 59.20.045(1) (2011).
[314] The term "federally assisted housing" is defined in the statute and regulations relating to criminal activity and access to criminal records to include public housing, the voucher program, project-based Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 514, and Section 515. *See* 42 U.S.C. § 13664(a)(2) (1998); 24 C.F.R. § 5.100 (2007).
[315] *See* 24 C.F.R. § 5.100 (2007); *see also* SEATTLE HOUS. AUTH., http://www.seattlehousing.org (last visited Mar. 28, 2011).
[316] *See* 24 C.F.R. § 5.100 (2007).
[317] *See id.*
[318] *See* Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, § 578, 112 Stat. 2461 (1983) [hereinafter QHWRA]; *see also* 66 Fed. Reg. 28776 (May 24, 2001).
[319] *See* 42 U.S.C. § 1437n(f) (1999).
[320] *See* 42 U.S.C. § 13661(a) (1998). Examples of exceptions include that the criminal household member has died or is imprisoned.
[321] *See* 42 U.S.C. § 13661(c) (1998).
[322] *See* 24 C.F.R. § 960.203(c) (2001).
[323] The regulations define "violent criminal activity" 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." 24 C.F.R. § 5.100 (2001).
[324] *See* 42 U.S.C. § 13661(c) (1998).
[325] 66 Fed. Reg. 28776-01 (2001).
[326] *See* Dep't of Hous. and Urban Dev. v. Rucker, 122 S. Ct. 1230, 1232 (2002); *see also* QWHRA Pub. L. No. 105–276, § 512 (1998); 66 Fed. Reg. 28776 (2001).

[327] QWHRA Pub. L. No. 105–276, §§ 576(d), 577, and 579; *see also* 66 Fed. Reg. 28776 (2001).
[328] There may be an innocent tenant defense under Washington law or some municipal codes. *See* WASH. REV. CODE § 59.18.130(6) (2011).
[329] *See* QWHRA Pub. L. No. 105-276, § 512(b); 42 U.S.C. § 1437f(d)(1)(B)(v) (2011); 66 Fed. Reg. 28784 (HUD comments).
[330] *See generally* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193 (1996).
[331] *See* 21 U.S.C. § 862a(a) (2008).
[332] *See id*; WASH. REV. CODE § 74.08.025. (2011).
[333] WASH. ADMIN. CODE § 388-400-0025(2) (2011); WASH. ADMIN. CODE § 388-448-0220 (2011).
[334] *See* WASH. REV. CODE § 74.08.290 (2011); WASH. REV. CODE § 74.08.331 (2011).
[335] The Act had originally made a prior drug conviction a lifetime ban on federal benefits, but this is no longer the case. *See* WASH. REV. CODE § 74.08.025(4) (2011); 21 U.S.C. 862a(a) (2008).
[336] *See* WASH. ADMIN. CODE § 388-400-0025 (2011).
[337] *See* WASH. ADMIN. CODE § 388-448-0001 (2011).
[338] *See* WASH. ADMIN. CODE §§ 388-450-005, 338-450-245 ("Income"), 388-470-005, 388-470-0075 ("Resources"), 388-488-005, 388-005-0010 ("Transfer of Property") (2011).
[339] *See* WASH. ADMIN. CODE § 388-424-0015(2) (2011).
[340] *See* WASH. ADMIN. CODE § 388-468-0005 (2011).
[341] *See* WASH. ADMIN. CODE § 388-448-0130 (2011). A person is not eligible for DL benefits if he or she has received general assistance or disability lifeline benefits for more than the maximum number of months as defined in WASH. ADMIN. CODE § 388-448-0250, is eligible for temporary assistance for needy families (TANF) benefits, is eligible for state family assistance (SFA) benefits, refuses or fails to meet a TANF or SFA eligibility rule, refuses or fails to participate in drug or alcohol treatment as required in WASH. ADMIN. CODE § 388-448-0220, is eligible for Supplemental Security Income (SSI) benefits, is an ineligible spouse of an SSI recipient, or failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.
[342] *See* WASH. ADMIN. CODE § 388-400-0025 (2011).
[343] *See* WASH. ADMIN. CODE § 388-442-0010 (2011).
[344] *See id.*
[345] *See id*
[346] *See* 42 U.S.C. § 1320a-7 (2010); 20 CFR § 404.468 (2011); 38 U.S.C. § 6105 (2003).
[347] 42 USC 402(x)(1)(B)(i) (2011). *See also Understanding Supplemental Security Income SSI Eligibility Requirements*, SOC. SEC. ADMIN., http://www.ssa.gov/ssi/text-eligibility-ussi.htm (last visited Mar. 28, 2011).
[348] *See* 20 C.F.R. § 404.468 (1997).
[349] *See* 42 U.S.C. § 1320a-7 (2010).
[350] *See generally* 20 CFR § 404.468 (2006).

[351] *See* US DEP'T OF VETERANS AFFAIRS, FEDERAL BENEFITS FOR VETERANS AND DEPENDENTS (2010) (*available at* http://www1.va.gov/opa/vadocs/current_benefits.asp.) (suggesting that VA benefits may be affected by conviction or parole status).
[352] *See id.*
[353] *See* Gerald McIntyre, *Have You Seen a Fleeing Felon? Social Security Administration Targets SSI Recipients with Outstanding Warrants*, 36 CLEARINGHOUSE REV. 474, 475 (2003).
[354] A client seeking more information may contact Northwest Justice Project's CLEAR program, an "intake, advice, and referral service for low income people seeking free legal assistance." *See What is CLEAR?*, NORTHWEST JUSTICE PROJECT, *available at* http://www.nwjustice.org/what-clear (last visited Mar. 28, 2011).
[355] *See* WASH. REV. CODE § 13.34.132 (2011) ("Termination of Parent-Child Relationship").
[356] *See* WASH. REV. CODE § 26.33.190 (2011) (Foster Care).
[357] *See* WASH. ADMIN. CODE § 246-924-445(5)(j) (2011).
[358] *See* WASH. REV. CODE § 13.34.132 (4) (2011).
[359] *See* WASH. REV. CODE § 72.09.111(1) (2011).
[360] *See* WASH. ADMIN. CODE § 388-06-0110. (2011).
[361] *See generally* WASH. ADMIN. CODE §§ 388-06-0170, 388-06-0180 (2011).
[362] CHILDREN'S ADMIN. DEP'T OF HEALTH AND SOC. SERV., CAPTA BACKGROUND CHECK WAC & CA POLICY, 3 (2007), *available at* http://www.dshs.wa.gov/pdf/ca/apsr07_12.pdf.
[363] *See* WASH. ADMIN. CODE § 388-06-0170 (2011).
[364] *See* WASH. REV. CODE § 26.33.190(2) (2011).
[365] *See* WASH. REV. CODE § 26.33.190(3) (2011)
[366] For some additional information on the DSHS policy regarding the licensing of foster and adoptive parents, see CHILDREN'S ADMIN. DEP'T OF HEALTH AND SOC. SERV., *supra* note 351, at 1–3.
[367] *See* WASH. REV. CODE § 46.61.502 (2011) ("Driving Under the Influence"); WASH. REV. CODE § 46.61.504 (2011) (Physical Control).
[368] *See* WASH. REV. CODE § 46.20.285 (2011) (providing a list of all of the suspension lengths.).
[369] *See* WASH. REV. CODE § § 46.20.342(2)(a)–(b) (2011).
[370] *See* WASH. REV. CODE § 46.20.265 (2011) ("Revocation for alcohol and drug violations"); WASH. REV. CODE § 9.41.040 (2011) (Firearm Possession).
[371] *See* WASH. REV. CODE § 46.20.265(2)(a)–(b) (2011).
[372] *See* WASH. REV. CODE § 46.20.265(2)(c) (2011)
[373] *See* WASH. REV. CODE § 46.25.090 (2011).
[374] *See* WASH. REV. CODE § 46.25.090(1)–(2) (2011).
[375] *See* WASH. REV. CODE § 46.20.391 (2011).
[376] *See* WASH. REV. CODE § 46.20.385 (2011).
[377] *See id.*
[378] *See* WASH. REV. CODE § 46.20.391 (2011).

[379] A person convicted of vehicular homicide, vehicular assault, DUI or being in physical control while under the influence of alcohol or drugs are not eligible for an ORL. *See* WASH. REV. CODE § 46.20.391(1) (2011).
[380] *See* WASH. REV. CODE § 46.20.391(23)(b) (2011).
[381] *See* WASH. REV. CODE § 29A.08.520 (2011) ("Voting rights"); WASH. REV. CODE § 2.36.070(5) (2011) ("Qualification of juror"); WASH. REV. CODE § 9.94A.637 (2011) ("Certificates of discharge").
[382] WASH. REV. CODE § 29A.08.520(12) (2011). For a felony conviction in a federal court or any other state court, the right to vote is restored as long as the person is no longer incarcerated.
[383] *See id.* For purposes of voting rights, a person is no longer under the authority of the DOC when they are no longer incarcerated.
[384] *See* WASH. REV. CODE § 29A.08.520(2) (2011).
[385] *See* WASH. REV. CODE § 29A.08.520(6) (2011).
[386] *See id*
[387] *See* WASH. REV. CODE § 2.36.070(5) (2011).
[388] *See id.*
[389] *See id*
[390] *See* WASH. REV. CODE § 9.94A.637(1)(a) (2011).
[391] *See* WASH. REV. CODE § 9.94A.637(2) (2011).
[392] *See* WASH. REV. CODE § 9.94A.637(5) (2011).
[393] *See generally* WASH. REV. CODE § 9.94A.673(2) (2011).
[394] The 1998 amendment to the Higher Education Act that denied loans, grants, and work study to students who have prior convictions for drug offenses was limited in 2006 to apply only to students who committed the offense while enrolled and receiving financial aid. *See* Higher Education Act of 1965, 20 U.S.C. § 1001 *et seq.* (1998).
[395] *See* Federal benefits found under 20 U.S.C. § 1070 *et seq.*; 42 U.S.C. § 2751 *et seq.*; Higher Education Act, 20 U.S.C. § 1091(r)(1); Deficit Reduction Act of 2005, Pub. L. No. 171, §8021, 120 Stat. 4. (2005). To receive financial aid, a student must demonstrate that they are a US citizen or eligible noncitizen, have a valid social security number, be registered with Selective Services, and have a high school diploma or GED.
[396] *See id.* Financial aid includes grants, loans and work-study.
[397] A qualified drug rehabilitation program must include two unannounced drug tests. The program must also be qualified to receive funds from federal, state, or local government, or be a state-licensed insurance company or be administered or recognized on the federal, state, or local level.
[398] *See Paying for College*, WASH. HIGHER ED. COORDINATING BD., http://www.hecb.wa.gov/paying/waaidprgm/waaidprgmindex.asp.(providing a list of Washington state financial aid programs).
[399] *See, e.g.*, WASH. REV. CODE § 2.28.170 (Drug Courts).
[400] *See* 10 U.S.C. § 504(a) (2006); 32 C.F.R. § 96.1 *et seq.* (2011).
[401] *See e.g., Disqualifiers*, ARMY DOMAIN, http://www.armydomain.com/info/usa/disqualifiers (last visited Mar. 28, 2011).
[402] *See id.*

[403] *See* State v. Stowe, 858 P.2d 267 (Wash. 1993) (holding that affirmative misadvise regarding collateral consequence of the impact of plea on defendant's military career constituted deficient performance).
[404] *See id.* at 270.
[405] Canada Immigration and Refugee Protection Act, S.C. 2001, c. 27 § 36(1)(c).
[406] *See* Canada Criminal Code, R.S.C. 1985, c. C-46 §§ 253–55.
[407] *See* Immigration and Refugee Protection Act, S.C. 2001, c. 27 § 36(2)(b).
[408] *See* Canada Criminal Code, R.S.C. 1985, c. C-46 § 19(1)(c.1)(ii).
[409] Immigration and Refugee Protection Act, S.C. 2001, c. 27 § 18(2).
[410] *See* Canada Criminal Code, R.S.C. 1985, c. C-46 § 179.
[411] The Jay Treaty, signed in 1794 between Great Britain and the United States, provided that American Indian Tribal Members could travel freely across the international boundary. The United States has codified this obligation in the provisions of Section 289 of the Immigration and Nationality Act as amended. *See* 8 U.S.C. § 1359 (1952).
[412] Tribal enrollment criteria are set forth in tribal constitutions, articles of incorporation or ordinances. These criteria vary by tribe, but generally they require genetic heritage. *See generally* DEP'T OF THE INTERIOR, GUIDE TO TRACING YOUR AMERICAN INDIAN ANCESTRY, *available at* www.bia.gov/idc/groups/public/documents/text/idc-002619.pdf (last visited Mar. 28, 2011).
[413] *See* 8 U.S.C. § 1359 (1952).
[414] *See id.*
[415] *See* Strickland v. Wash., 466 U.S. 668, 688 (1984).
[416] *See, e.g.*, State v. Sandoval, 249 P.3d 1015, 1021 (Wash. 2011).