



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

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

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## **The Collateral Consequences of a Conviction**

### **Introduction**

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

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

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

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

### **The Obligations of the Criminal Defense Attorney**

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

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

The Supreme Court has emphasized that it has “never applied a distinction between direct and collateral consequences to define the scope of constitutionally ‘reasonable professional assistance’” under the Sixth Amendment.<sup>1</sup> The defendant must be made aware of certain “severe” consequences that are collateral, yet nevertheless “certain” to result from the conviction.

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

### **Limitations of this Publication**

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

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

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

### **Key Questions to Ask**

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

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

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

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

### **Preliminary Concept: Adjudication vs. Withhold of Adjudication**

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

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

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

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

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

## **The Impossibility of Expunging a Withhold**

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

## **The Treatment of Withholds in Other Jurisdictions**

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

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

## **Relief**

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

## **Sealing or Expunging Criminal Records**

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

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

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

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

### The Difference Between Expungement vs. Sealing

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

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

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

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

### Automatic Sealing

As of 2019, for a person arrested for any offense other than a forcible felony or a sex offense, his or her criminal history will be automatically sealed if no charges were filed, if the case was dismissed, or if the person was acquitted by a judge or a jury.<sup>16</sup> There is no limitation on how many times a person can receive automatic sealing under this provision. This provision does not apply if the charges were dismissed due to the defendant's incompetency to proceed.

### Administrative expunction for arrests made contrary to law or by mistake

As of 2019, if a police department determines that it has unlawfully or mistakenly arrested a person, or if a court determines that an illegal arrest has occurred, the police department is required to contact the FDLE and inform them of the unlawful arrest which will result in the automatic administrative expunction of that case.<sup>17</sup>

### Effect of Record Expungement or Sealing

A criminal record that is expunged will be physically destroyed, except to the extent that the Florida Department of Law Enforcement retains a confidential copy that is not subject to a public records disclosure request.<sup>18</sup>

A criminal record that is sealed is confidential and likewise exempt from public records requests. The record is only available to the person and to criminal justice agencies for the purposes of activities such as background checks (including backgrounds checks related to a firearm purchase).<sup>19</sup>

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

- Is applying for a job with a criminal justice agency;
- Is a defendant in a criminal case;
- Is applying for admission to the Florida Bar;
- Is seeking to be employed or licensed by certain state government departments (most pertaining to education, children, or healthcare);
- Is seeking to be employed by a state contractor in a sensitive position having direct contact with children, the disabled, or the elderly; or
- Is seeking to become a court-appointed guardian.<sup>20</sup>

### The Procedure for Expungement or Sealing

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

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

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

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

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

- A valid certificate of eligibility from the FDLE; and
- A sworn statement from the petitioner attesting that he or she:

- Has never previously been convicted of any offense;
- Has not been adjudicated guilty or found delinquent of committing any of the acts stemming from the case the person seeks to expunge or seal;
- Has never previously had a case expunged or sealed; and
- Is eligible for expungement or sealing to the best of his or her knowledge.

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

Attorneys have had success in getting these companies to remove from sale criminal histories that were subsequently sealed or expunged by the court. A person who successfully seals or expunges a case should consider looking at these companies' websites to make sure they are not selling his or her sealed or expunged records.

### Expunging or Sealing with a Prior Juvenile Delinquency

Ordinarily, a person cannot expunge or seal a criminal history if he or she has a prior adjudication of guilt. However, a person who was previously adjudicated delinquent as a juvenile can still apply for expungement or sealing provided he or she was not found delinquent of a felony or certain serious misdemeanors including animal cruelty, assault, battery, or petit theft.<sup>21</sup>

### The Self-Defense Exception for Subsequent Expungement

Ordinarily, a person can only have one case expunged. However, a person may seek to have a subsequent case expunged if he or she can provide to the FDLE a certified statement from the prosecutor indicating that criminal charges were not filed or were later dismissed due to a finding that the person acted in self-defense.<sup>22</sup>

### Online Booking Photos

In recent years, there has been a proliferation of companies that post a person's booking photo online following an arrest and charge a fee to have the picture removed. Expunging or sealing a criminal record will not result in the removal of a person's photo from these websites. However, in 2017 the Florida Legislature passed a law prohibiting these companies from charging a fee to have booking photos taken down, and further requiring companies to take a booking photo down upon request.<sup>23</sup>

### Administrative Sealing Following Dismissal or Acquittal

In 2017, the Florida Legislature passed a new law expanding the situations in which an arrest can be sealed. When a person is arrested for any felony or misdemeanor and the prosecution

declines to press charges, the trial court dismisses the charges or enters a judgment of acquittal, or a jury returns a verdict of not guilty at trial, that arrest will be automatically sealed.<sup>24</sup>

## **The Governor's Clemency Powers**

A person convicted of a felony will lose his or her civil rights. See the section on Civil and Civic Rights for more details. This bars the person from holding public office, serving on juries, and exercising the right to vote. Unfortunately, obtaining executive clemency in Florida is a difficult process. Lost civil rights can only be regained by an executive pardon or upon the restoration of civil rights, both of which can only be done by the Executive Clemency Board.<sup>25</sup>

Pardon and civil restoration recommendations are made by the Clemency Board, which is administered by the Office of Executive Clemency. The Clemency Board consists of the Governor and three members of the Florida Cabinet. The Rules of Executive Clemency can be found at [https://www.fcor.state.fl.us/docs/clemency/clemency\\_rules.pdf](https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf). The Clemency Board can deny a request for pardon or civil restoration for any reason.<sup>26</sup>

## Executive Pardons

A full pardon forgives guilt for any Florida convictions. It is as if the conviction never happened. It restores all prior civil rights, including the right to possess firearms.<sup>27</sup> Provided the person has no convictions from other states or the federal system, a pardon restores a person's right to vote, serve on juries, and hold public office. Similarly, a person convicted of a sexual offense is relieved of the obligation to register as a sex offender if pardoned.<sup>28</sup>

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

The Clemency Board also has the power to issue a "Pardon Without Firearm Authority."<sup>29</sup> Like a full pardon, this releases a person from punishment, forgives guilt, and restores all of the applicant's civil rights, except for the right to own, possess, or use a firearm.

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

## Restoration of Civil Rights

A person may apply to the Clemency Board to seek a Restoration of Civil Rights.<sup>30</sup> This restores all of the applicant's civil rights (such as the right to vote or serve on jury), except for the right to possess or use firearms. It also does not relieve a person's obligation to register as a sex offender if otherwise required.

If an applicant wishes to regain firearm rights, he or she must specifically seek the Specific Authority to Own, Possess, or Use Firearms from the Clemency Board.<sup>31</sup> In light of federal laws on firearm possession (see the section on Firearms for more details), the Clemency Board will not give this relief to any person with felony convictions from federal court or any out-of-state court.

If the applicant has finished serving his or her sentence, including probation, owes no restitution to any victim, has not been convicted of certain enumerated serious offenses, and five years have passed since the completion of the sentence without any new arrests, a person can apply for the restoration of his or her civil rights (except for the right to possess firearms) without a hearing.<sup>32</sup> If a person was convicted of one the more serious offenses, the person must wait for seven years before applying for civil restoration and a hearing before the Clemency Board will be required.<sup>33</sup>

### Process

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

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

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

An application may also include character references, letters of support, and any other material relevant to the clemency decision.<sup>34</sup> Although not required, it is a good idea to include this supporting documentation in order to present the best case possible to the Clemency Board.

For people seeking restoration of civil rights following a more serious conviction, a hearing before the Clemency Board will be held.<sup>35</sup> Applicants are not required to attend but attendance is strongly encouraged.<sup>36</sup> The Board will give an applicant a total of 10 minutes to testify and present the testimony of supporting witnesses in favor of clemency.<sup>37</sup> An applicant who has been denied clemency must wait two years before reapplying to the Clemency Board.<sup>38</sup> There does not appear to be a limit to how many times an applicant can apply for clemency, provided the person respects the two year waiting period once an application for clemency has been denied.

## Legal Challenges to Florida’s Process for Restoring Voter Rights

In February of 2018, a federal district court judge in *Hand v. Scott* ruled that Florida’s process for restoring voting rights to people with felony convictions was unconstitutional, given that the State’s clemency board had “unfettered discretion” to choose who can have their rights restored and when.<sup>39</sup> The district court ruled that the right to vote was too fundamental to allow for such an arbitrary restoration procedure. The district court ordered the Governor to create a new plan for restoring voter rights that passed constitutional muster, and the Governor appealed. Following the enactment of Amendment Four (discussed in the Civic and Civil Rights section below), the federal Eleventh Circuit Court of Appeals ruled that the litigation in *Hand* was moot.<sup>40</sup>

### **Benefits – Federal**

#### **Social Security**

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

- Is confined in any jail, prison, or other correctional institution following a conviction for a crime;
- Is confined at an institution following a finding that the person is guilty of a crime, but insane, not guilty of a crime by reason of insanity, or incompetent to stand trial;
- Is confined under a civil commitment statute as a sexual predator;
- Is a fugitive felon who is evading felony prosecution; or
- Is in violation of state or federal parole or probation.<sup>41</sup>

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

- Is a fugitive evading felony prosecution;
- Is in custody following a felony conviction; or
- Has violated a condition of state or federal parole or probation.<sup>42</sup>

However, a person can restore his or her eligibility upon a showing that a court has issued an “exonerating order” for the offense in question.<sup>43</sup> Eligibility can also be restored upon a showing that the offense was non-violent and not drug-related.<sup>44</sup>

In determining a person’s disabilities for purposes of federal benefits, the Social Security Administration will not consider any physical or mental impairment, or the aggravation of an impairment, if it arose in the course of a felony and the person was convicted of this felony.<sup>45</sup> For example, a person who trips and injures his or her foot while committing a robbery cannot receive disability payments for this impairment.

Representative Payees: A person who has been convicted of a felony cannot be a beneficiary's representative payee for Social Security payments, unless there is a determination made by the Commissioner of Social Security that this would be appropriate notwithstanding the conviction.<sup>46</sup>

## **SNAP and TANF Benefits**

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

Similar to Social Security benefits, SNAP and TANF benefits are not available to any person who is a fugitive felon or in violation of parole or probation.<sup>47</sup> Certain felony convictions also make a person ineligible for SNAP benefits. These offenses include murder, aggravated sexual abuse, or any state or federal offense involving a sexual assault.<sup>48</sup>

### SNAP, TANF, and Drug Convictions in Florida

In 1996, the SNAP and TANF programs were substantially modified by Congress. Among other changes, Congress made any person convicted of a felony drug offense (including possession or use) ineligible for SNAP and TANF benefits.<sup>49</sup> However, because SNAP and TANF benefits are distributed by state programs that are funded through federal grants, Congress allowed for each state to choose whether or not to opt out of the ban on those benefits for people with felony drug convictions.<sup>50</sup>

In Florida, SNAP and TANF benefits are distributed by the Department of Children and Families ("DCF"). Florida has opted out of the complete drug conviction benefits ban and instead implemented a modified ban for cash and food assistance benefits.<sup>51</sup> A person is only ineligible for cash and food assistance benefits in Florida if he or she has been convicted of drug trafficking.

*Practice Tip*: While a felony conviction for possession, sale, or distribution of a controlled substance will not result in a loss of SNAP or TANF benefits in Florida, as of 2013 13 states have chosen not to opt out of the ban on benefits for people convicted of drug-related felonies.<sup>52</sup> A person facing a felony drug conviction in Florida who resides in another state should look into his or her home state's opt-out provision and be aware of the potential consequences back home.

## **Medicaid**

Federal law makes it illegal to knowingly make false or misleading statements in applying for benefits under any federal health care program.<sup>53</sup> A person convicted of violating this federal law

may be suspended under Florida law from receiving Medicaid benefits for a period of up to one year.<sup>54</sup>

## **Veteran Benefits**

A person who is incarcerated in any federal or state correctional facility as a result of a conviction for any felony or misdemeanor is not entitled to his or her military pension for the duration of their imprisonment.<sup>55</sup> This deprivation of veteran pension payments begins on the 61st day of incarceration and ends when the imprisonment ends. However, a veteran's pension payments can be paid to the veteran's spouse or children during his or her imprisonment.<sup>56</sup>

A person convicted of certain extremely serious crimes against the United States (such as treason) will lose his or her veteran benefits.<sup>57</sup>

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

Certain drug convictions will result in the loss of specific federal benefits. These benefits do not refer to social welfare benefits like retirement, welfare, Social Security, health, disability, veteran benefits, or public housing.<sup>58</sup> Rather, they are commercial in nature, such as any grant, contract, loan, professional license, or commercial license provided by a federal agency.

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

- For up to five years after a first conviction at the court's discretion;
- For up to 10 years after a second conviction at the court's discretion;
- Permanently after three or more convictions.<sup>59</sup>

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

- Upon a first conviction, a person can lose, at the discretion of the court, all federal benefits for up to one year; can be required to complete a drug treatment program; can be required to perform community service; or some combination of all three.
- For two or more convictions, a person can lose all federal benefits for up to five years at the discretion of the court.<sup>60</sup>

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

- Completes a supervised drug rehabilitation program;
- Has otherwise been rehabilitated; or
- Has made a good faith effort to gain admission to a supervised drug rehabilitation program, but is unable to do so because of inaccessibility or unavailability of such a program, or the inability of the individual to pay for such a program.<sup>61</sup>

## **Bankruptcy (Chapter Eleven)**

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

Additionally, when a person files for bankruptcy and has previously been convicted of a violent or drug trafficking crime, his or her victim may file a petition asking the court to deny the bankruptcy filing. The court may grant that request upon a determination that it is in the victim's best interest.<sup>62</sup>

## **Benefits – State**

### **Unemployment Benefits**

Under the Reemployment Assistance Program Law, certain qualified people in Florida who are unemployed through no fault of their own are eligible to receive temporary wage replacement benefits.<sup>63</sup>

The following circumstances disqualify a person from receiving these benefits:

- A person cannot receive unemployment benefits for any week in which he or she is unavailable for work due to incarceration or imprisonment.<sup>64</sup>
- If a person was terminated for violating any criminal law in connection with his or her work, and was convicted, or entered a plea of guilty or no contest, the person is not entitled to reemployment assistance benefits for up to one year and until he or she has earned income of at least 17 times his or her weekly benefit amount.<sup>65</sup>
- A person who has been convicted of knowingly making a false statement to obtain or increase reemployment assistance benefits is ineligible to receive benefits for up to one year. A person cannot receive any further benefits until any overpayment of benefits had been repaid in full.<sup>66</sup>

A person is also disqualified for receiving any benefits if the employee was terminated because he or she failed to maintain a license, registration, or certification required by law for the employee to do his or her job.<sup>67</sup>

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

## **Workers' Compensation**

Certain employees injured on the job are entitled to workers' compensation. A person may not receive workers' compensation benefits if a court finds that he or she knowingly made a false or fraudulent statement for the purposes of obtaining benefits or otherwise intentionally engaged in any criminal act for the purpose of securing workers' compensation benefits.<sup>68</sup>

## **State Pension**

Any public employee convicted of embezzling public funds, theft from his or her employer, any Chapter 838 felony (bribery and misuse of public office), any impeachable offense, certain sexual offenses against minors, or any felony with the intent to defraud the public of his or her services, forfeits all benefits under the public retirement system if the offense was committed prior to retirement.<sup>69</sup>

## **Court Costs and Fines**

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

The clerk of court has the power to pursue the collection of these courts costs. If courts costs, fees, or fines have gone unpaid for 90 days, the clerk's office can refer the unpaid account to a collection agency.<sup>70</sup> This can result in a person's credit score being negatively affected. Additionally, it can result in a driver's license suspension. See the "[Driving Privileges](#)" section below for more details.

## **Driving Privileges**

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

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

## Driving Under the Influence (DUI)

- First Conviction: A person's first DUI conviction will result in a license suspension of at least six months and at most one year. If the judge fails to specify the suspension length on the record, the suspension will be for the full year.<sup>71</sup>
- Second or Third Convictions: A person's second DUI conviction will result in a suspension of at least five years if that conviction is within five years of his or her first DUI conviction.<sup>72</sup> A person's third DUI will result in a suspension of at least 10 years if that conviction is within 10 years of two prior DUI convictions.<sup>73</sup> If the judge fails to specify the suspension length on the record, it will be for the minimum period allowed (i.e., either five or 10 years).<sup>74</sup>
- Fourth Conviction: A person with four or more DUI convictions will have his or her license permanently revoked. Any alcohol-related or drug-related conviction from another state will count for the purpose of determining a person's prior convictions.<sup>75</sup>
- DUI Manslaughter: A person convicted of DUI manslaughter will have his or her driving privilege permanently revoked.<sup>76</sup>

A person convicted of DUI must take a driver improvement course in order to maintain his or her license.<sup>77</sup> His or her license will be canceled until the completion of this course.

### DUI Diversion Programs

Unlike some offenses, a judge may not withhold adjudication in a DUI case. If a person takes a plea to DUI or is convicted at trial, the court *must* adjudicate him or her guilty.<sup>78</sup> Coupled with the escalating sanctions that come with repeat DUI convictions, this can make even a first DUI charge a very serious matter.

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

### Ignition Interlock Violation

A DUI conviction may, and for subsequent offenses must, result in the installation of an ignition interlock device on a person's vehicle. It is against the law to tamper with or circumvent the operation of these devices; to request that another person blow into such a device; to blow into such a device on behalf of a person with a suspended driving privilege; or to lend a vehicle to a person who is required to have this device on his or car own car.<sup>79</sup>

A person who attempts to circumvent an ignition lock in the above ways will have his or her license suspended for one year. “Upon conviction of a separate violation of this section during the same period of required use of an ignition interlock device,” a person will have his or her license suspended for five years.<sup>80</sup>

### **Habitual Traffic Offender**

A person designated as a Habitual Traffic Offender (“HTO”) will have his or her license revoked for a minimum period of five years.<sup>81</sup> To qualify as an HTO, a person must have accumulated within the past five years, arising out of separate acts, three or more convictions for the following offenses:

- Manslaughter resulting from the operation of a motor vehicle;
- Driving under the influence;
- Any felony in the commission of which a motor vehicle is used;
- Driving a motor vehicle with a suspended or revoked license (“DWLS”);
- Failing to stop and render aid as required under Florida law in the event of a motor vehicle crash resulting in the death or personal injury of another; or
- Driving a commercial motor vehicle while his or her privilege is disqualified.<sup>82</sup>

A person will also be designated as an HTO if he or she accumulated within the past five years 15 convictions for moving traffic offenses for which points may be assessed.<sup>83</sup>

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

### **Traffic Offenses Resulting in Injury or Death**

A person convicted of murder resulting from the operation of a vehicle will have his or her driver’s license permanently revoked.<sup>84</sup>

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

- Manslaughter resulting from the operation of a vehicle;
- DUI with serious bodily injury to another;
- Vehicular homicide; or
- Leaving the scene of an accident that caused injury, serious bodily injury, or death.<sup>85</sup>

A person who violates any traffic law that resulted in a crash that caused the death or personal injury of another or property damage exceeding \$500 can have his or her license suspended<sup>86</sup> for up to one year.<sup>87</sup>

A person who is convicted of a traffic offense which resulted in death or great bodily harm, or convicted of two crashes within a two year period resulting in property damage greater than \$500 cannot have his or her license restored without taking a driver improvement class.<sup>88</sup>

## **Drug Offenses**

Any person over the age of 18 convicted of possessing, selling, or trafficking a controlled substance, or convicted of conspiring to commit these offenses, will have his or her driver's license suspended for six months or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families.<sup>89</sup> However, the judge may direct the Department of Motor Vehicles ("DMV") to issue a driver's license restricted to business or employment purposes.<sup>90</sup>

License suspension under this provision can only be applied to a conviction for an offense specifically listed in the statute (possession, sale, trafficking, conspiracy). Other offenses which are not specifically listed but are drug-related (such as the manufacture<sup>91</sup> or purchase of drugs<sup>92</sup>) will not trigger this suspension.

Federal law requires that a state suspend or revoke the driver's license of a person convicted of any drug offense, or risk losing federal highway funds.<sup>93</sup> However, each state has the right to opt out of this suspension requirement if that state's governor and legislature notify the federal government of their opposition to this policy.<sup>94</sup> As of the publication date of this manual, Florida has declined to opt out of this drug suspension requirement.

### *Practice tips:*

- Even a conviction to a charge as petty as misdemeanor possession of marijuana will trigger this suspension. Although the judge has no discretion to waive the automatic suspension if the defendant has been convicted of an enumerated drug offense, the court may have discretion, depending on the case, to withhold adjudication. A withhold if possible is significantly preferable to an adjudication, given that it does not trigger the automatic license suspension.
- It is important to remember that only the enumerated crimes trigger the automatic suspension. The driving privilege should not be suspended merely because the conviction is drug-related.

Additionally, a person convicted of a felony for the possession of a controlled substance will have his or her driving privilege revoked if, at the time of the possession, the person was in control of a motor vehicle.<sup>95</sup> In a person has his or her driving privilege revoked under this rule, he or she will not be eligible to receive a hardship license during the revocation period.<sup>96</sup>

## Drag Racing

A person who is adjudicated guilty of or receives a withhold for drag racing will have his or her license suspended.<sup>97</sup> The length of the suspension depends on whether the person has any prior convictions for drag racing.

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

## Miscellaneous Offenses

Discretionary: A person convicted of violating *any* Florida law regulating the operation of vehicles can have his or her license suspended if the court determines that the seriousness of the offense and circumstances surrounding the conviction warrant the suspension.<sup>98</sup>

A person convicted of obtaining his or her vehicle registration through fraudulent means can have his or her license plate canceled, and can be forced to return the plate to the department.<sup>99</sup>

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

- Any felony in the commission of which a vehicle was used;<sup>100</sup>
- Making a false statement under oath to the DMV;<sup>101</sup>
- Three convictions for reckless driving in a one year period;<sup>102</sup>
- Any law against lewdness or prostitution where the violation was accomplished with the use of a vehicle;<sup>103</sup>
- Motor vehicle insurance fraud or patient brokering.<sup>104</sup>

A person convicted of failing to stop for a school bus twice within the preceding five years will have his or her license suspended for at least 90 days, but not more than six months.<sup>105</sup>

A person who is convicted or receives a withhold for soliciting prostitution in a case involving the use of a vehicle, and who has a prior soliciting conviction, will have his or her license suspended for at least one year.<sup>106</sup>

A person convicted of stealing a vehicle or the parts of a vehicle will have his or her driver's license automatically revoked. The DMV will not consider any application for reinstatement until the person has finished serving his or her sentence, including probation or parole.<sup>107</sup>

## License Suspension for Non-Criminal Activity

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

- Failure to pay financial obligations relating to a criminal offense or a non-criminal traffic ticket. If these court costs are not paid, a person’s license will be suspended until the fees are paid in full or a payment plan has been established.<sup>108</sup>
- Failure to pay child support.<sup>109</sup> Federal law requires each state to establish a procedure for suspending the driver’s license for any person overdue in his or her child support obligations.<sup>110</sup>
- Failure to comply with a subpoena or support order relating to paternity.<sup>111</sup>
- If an individual receives the following number of points on his or her driver’s license within the set time frames it will be suspended for the corresponding time periods.
  - 12 points within 12 months is a 30 day suspension.
  - 18 points within 18 months is a 90 day suspension.
  - 24 points within 36 months is a one-year suspension.

### **Non-residents Convicted of Traffic Offenses in Florida**

A non-resident driver who is convicted in Florida of any motor-vehicle offense may have a certified copy of the conviction forwarded to the DMV of the state where the person is a resident.<sup>112</sup> A non-resident driver facing conviction in Florida should be aware that it could impact the validity of his or her license back home.

### **Florida Residents Convicted of Traffic Offenses in Other States**

A Florida resident’s license can be suspended if the department receives notice of an out of state conviction that, had it been committed here, would be grounds for suspension or revocation.<sup>113</sup> A Florida resident facing a traffic offense in another state should be aware of that state’s reporting laws.

### **Relief from a Suspended License: Hardship Licenses**

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

- A “business purpose” hardship license, which grants a limited privilege allowing for any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for religious/church or medical purposes.
- An “employment purposes” hardship license, which grants a limited privilege for driving to and from work and on-the-job driving.<sup>114</sup>

A person whose license has been revoked as a Habitual Traffic Offender cannot seek a hardship license until one year of the revocation has elapsed.<sup>115</sup>

At a hardship hearing, a person can show that the license suspension prevents carrying out his or her job and that the use of a license for business purposes is necessary to support his or her family. For a DUI suspension, the DMV will require proof of the completion of a driver's improvement class or DUI class before granting a hardship license. It will always consider letters of recommendation from community members, law enforcement officers, or judicial officers.<sup>116</sup>

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

A person with multiple prior DUI suspensions, a DUI manslaughter suspension, or a permanent license revocation due to priors DUIs can apply for a hardship license in limited circumstances. The person will have to wait a certain amount of time before applying for the license, the length of which depends on the reason for the suspension or revocation; must not have been driving during the suspension period; and will have to prove that he or she is drug-free and has completed a DUI course. If a hardship license is issued, the person will be placed under the supervision of a DUI program for a certain period of time.<sup>117</sup>

## **Housing Issues**

### **Federally Subsidized Housing**

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

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

## Admission to Federally Subsidized Housing

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

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

- Is subject to a lifetime registration requirement under a state sex offender registration program;<sup>118</sup>
- Was convicted of the manufacture or production of methamphetamine on the premises of a federally assisted housing program;<sup>119</sup>
- Was evicted from federally assisted housing for drug-related criminal activity in the past three years, unless the person completes a rehabilitation program.<sup>120</sup>

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

- Drug-related criminal activity;<sup>121</sup>
- Violent criminal activity;<sup>122</sup>
- Other criminal activity which threatens the health, safety, or right to peaceful enjoyment of the premises by other residents of the PHA or the landlord's staff.

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

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

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

Some applicants receive additional protections under the Violence Against Women Act ("VAWA") and the Fair Housing Act ("FHA"). The PHA or landlord may not deny an applicant

if the criminal history was related to domestic violence, stalking, or sexual assault. If the criminal activity was related to an applicant's disability, the owner or PHA may be required to offer a reasonable accommodation under the FHA and admit the tenant, unless the tenant would be a direct threat.

If the applicant's household includes a person who will lead to the denial of subsidized housing, the applicant may be able to request to remove that person from the household. For example, if an applicant's adult son was recently convicted of cocaine possession, the applicant could ask to remove her son from her application.

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

### **Participants in Federally Subsidized Housing**

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

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

### **Evictions from Public Housing**

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

- Criminal activity that threatens the health, safety, or right to peaceful enjoyment of other tenants or other people residing near the premises; or
- Drug-related criminal activity on or off the premises.<sup>123</sup>

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

The PHA must evict if the tenant has been convicted of manufacture or production of methamphetamine on the premises of federally assistance housing.<sup>124</sup> A PHA may also be able to evict a tenant if any member of the household is convicted of a felony or if they are a fleeing felon or violating a condition of probation or parole.<sup>125</sup>

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

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

### **Evictions from Project-Based Section 8**

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

- Criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, persons residing in the immediate vicinity, or property management staff; or
- Drug-related criminal activity on or near the premises.<sup>126</sup>

It is also a violation of the lease if any member of the household is a fleeing felon or violating a condition of probation or parole.<sup>127</sup>

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

### **Terminations from the Section 8 Voucher Program**

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

- Drug-related criminal activity;
- Violent criminal activity; or
- Criminal activity which threatens the health, safety, or right to peaceful enjoyment of other residents residing in the immediate vicinity.<sup>128</sup>

The PHA must also terminate the voucher if the tenant has been convicted of manufacture or production of methamphetamine on the premises of federally assistance housing.<sup>129</sup>

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

### **Public Housing Authorities in Florida**

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

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

### **Miscellaneous Issues**

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

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

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

## **Other Subsidized Housing in Florida**

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

**The Florida Urban Homesteading Act:** In 1999, the Florida legislature passed the Urban Homesteading Act.<sup>130</sup> Under this act, the Department of Economic Opportunity provides housing loans to qualified buyers.<sup>131</sup> A person will not qualify for this loan program if he or she or his or her spouse has been convicted of a drug-related offense within the last three years.<sup>132</sup> Furthermore, a person who receives this loan must stay free of drug-related convictions for the full term of the loan.<sup>133</sup>

**Adult Family Care Homes:** An adult family care home (“AFCH”) is a private residence licensed by the Florida Department of Elder Affairs. An AFCH provides housing, food, and care to older people unable to live independently. The providers in an AFCH live with the people they serve (up to a maximum of five residents). All residents in an AFCH (in addition to the providers) must pass a background screening check as a condition of eligibility.<sup>134</sup>

**Mobile Home Parks:** The owner of a mobile home park may evict a mobile home owner, tenant, or occupant if that person has been convicted of violating any state or federal law or any local ordinance, provided “the violation is detrimental to the health, safety, or welfare of other residents of the mobile home park.”<sup>135</sup> A person with such a conviction can also be denied initial tenancy in a mobile home park under this provision.

**Private Housing Issues:** The Fair Housing Act provides numerous anti-discrimination protections, such as prohibiting the owner of a dwelling from discriminating against a potential buyer or renter on the basis of race, color, national origin, sex, handicap, familial status, or religion.<sup>136</sup> However, the Act specifically does not prohibit any discrimination against a person who has been convicted of the illegal manufacture or distribution of controlled substances.<sup>137</sup> In general, there is little to stop a private landlord for denying a person tenancy based on his or her criminal past.

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

## **Employment Issues**

### **Employment – Federal Law**

Almost every job with the federal government will require the applicant to submit to a background check.<sup>138</sup> The extent and depth of this background check is typically proportionate to the importance and sensitivity of the position.

Due to the wide array of federal departments, agencies, and bureaus, a complete list of the federal jobs and the degree to which they screen an applicant's criminal record is beyond the scope of this manual. However, a discussion on military service follows, given the large number of people from diverse backgrounds who consider military service as a career option.

### **Military Service**

Under federal law, a person with a felony conviction may not enlist in the United States Armed Services.<sup>139</sup> In “meritorious cases,” however, exceptions can be authorized.<sup>140</sup>

The Department of Defense (“DoD”) has issued similar instructions regarding the qualification standards for enlistees.<sup>141</sup> These standards require that enlistees be of “good moral character.”<sup>142</sup> This is intended to disqualify from service “individuals under any form of judicial restraint,” such as bond or a term of imprisonment,<sup>143</sup> and “those with significant criminal records.”<sup>144</sup> Like federal law, the DoD standards allow for a person convicted of a felony to obtain a waiver.

Whether a person will receive a waiver is a case-by-case assessment. The military considers the person's adjustment to civilian life following the conviction,<sup>145</sup> all of the details surrounding the offense, and any letters of recommendations from community leaders who know the applicant's character, such as school officials or law enforcement officers.<sup>146</sup>

A person convicted of any crime of domestic violence, including a misdemeanor, is outright barred from military service. In 1997, Congress amended the 1968 Gun Control Act to prohibit selling or providing a firearm to anyone convicted of a crime of domestic violence, including misdemeanors.<sup>147</sup> The law contains no exception for military personnel or law enforcement officers. Because of the need for military personnel to have access to firearms, the DoD has decided as a categorical matter that an individual with a conviction for a crime of domestic violence will not receive a waiver.<sup>148</sup>

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

## **Employment – State Law**

### **Private Employers**

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

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

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

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

Florida currently does not have any state law prohibiting or limiting a private employer's ability to consider an applicant's criminal history. However, any person who works for a private company that provides services to a school district must submit to a background check. A person who has been convicted of certain serious offenses, including sexual offenses and child abuse, is not permitted to work on school grounds.<sup>149</sup>

An employer's categorical ban on hiring people with criminal convictions can have the practical effect of violating Title VII of the Civil Rights Act if it in effect disproportionately screens out a Title VII-protected group (such as an entire race).<sup>150</sup> However, in practice these disparate impact claims are difficult to prove.

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

### **Professional Licenses**

A professional licensing board can deny a license to a person who has been convicted of a felony or first-degree misdemeanor that is directly related to the practice of the profession or jeopardizes the public.<sup>151</sup>

Professional licensing boards will typically take an applicant's character into account. In doing so, no distinction is made between a withhold and an adjudication of guilt. Greater scrutiny is

given to professions involving relationships of trust or vulnerable clients. This includes healthcare and social welfare related positions, as well as jobs performed in other people's home.

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

### **Employment with the State of Florida and Background Checks**

As a general matter, no person may be disqualified from employment by the State of Florida, any of its agencies, or disqualified from employment by a municipality solely because of a prior criminal conviction.<sup>152</sup> However, a person can be disqualified if the crime was a felony or first-degree misdemeanor and directly relates to the job being sought.

This protection does not apply to the following jobs:

- Any position in with law enforcement or in a correctional agency;
- Firefighters; or
- County or municipal positions deemed critical to security or public safety (for example, an airport or seaport).<sup>153</sup>

### Background Screening

Certain jobs with the state or in regulated fields require the employee to undergo a Level 1 background check or a Level 2 security background check.<sup>154</sup> A Level 2 background check is more thorough and includes processing the applicant's fingerprints. Like the federal government, background checks are more likely for jobs involving working with children, vulnerable people, or otherwise placing the employee in a position of trust. As a general matter, these screening requirements apply to not only prospective employees, but to contractors and volunteers as well.

To satisfy either level of background check, the applicant:

- Must not have an open criminal case and
- Must not have been found guilty, regardless of adjudication, of the following offenses:
  - Any violation of Chapter 784 (Assault, Battery, Culpable Negligence) that constitutes a felony;
  - Any violation of Chapter 800 (Lewdness and Indecent Exposure);
  - Any violation of Chapter 812 (Theft and Robbery) that is a felony;
  - Any violation of Chapter 847 (Obscene Literature);
  - Any felony drug offense or any misdemeanor drug offense if a person involved in the crime was a minor;
  - Abusing, neglecting, or exploiting the elderly or disabled adults;
  - Any crime of domestic violence;
  - Arson;
  - Burglary;

- Child abuse, contributing to the delinquency of a child, incest, or sexual performance by a child;
- Depriving a law enforcement officer of protection or the means of communication;
- Escape, aiding an escape, or harboring an escapee;
- Exhibiting a firearm within 1000 feet of a school or possessing a weapon on school property;
- Felony voyeurism;
- Fraudulent sale of a controlled substance, if a felony;
- Inhumane treatment of an inmate resulting in great bodily harm;
- Introduction of contraband into a correctional or detention facility;
- Killing an unborn child by injury to the mother;
- Kidnapping, false imprisonment, or luring or enticing a child;
- Lewd and lascivious offenses;
- Misdemeanor assault or battery where the victim was a minor;
- Murder, manslaughter, or vehicular homicide;
- Prostitution;
- Recruiting another to join a criminal gang;
- Resisting an arrest with violence;
- Sexual battery or unlawful sexual activity with a minor;
- Sexual misconduct with developmentally disabled or mentally ill patients; or
- Sexual misconduct in a juvenile justice program.

If the employee was adjudicated delinquent as a juvenile of any of the above offenses, to satisfy the background check the employee's record must have been sealed or expunged.<sup>155</sup>

Every state agency is required to designate which positions require a Level 1 background check and which positions, due to the special trust or responsibility or sensitive location involved, require a Level 2 background check.<sup>156</sup> Please see Appendix B for a list of jobs that require such screenings.

### Exemptions from Disqualification

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

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

In any of the above situations, the applicant must have paid all outstanding court costs, fines, fees, or restitution related to the conviction.<sup>157</sup>

It is the applicant's burden to demonstrate by clear and convincing evidence that he or she should not be disqualified from employment. This includes proof of rehabilitation, a discussion of the circumstances surrounding the criminal incident, the time that has elapsed since the incident, the nature of the harm caused to the victim, the history of the employee since the incident, or any other evidence indicating that the applicant will not pose a threat if hired. The agency will consider subsequent arrests and convictions, even if the subsequent cases were not disqualifying offenses themselves.<sup>158</sup>

An exemption from disqualification cannot be granted to sexual offenders, sexual predators, or career offenders.<sup>159</sup>

### Background Checks and Prison Visitation

Beyond job and professional license applications, a person who wishes to visit an inmate in state prison must pass a criminal history background check.<sup>160</sup> The Department of Corrections "Request for Visiting Privileges" form (form "DC6-111A") requires any person who wishes to visit an inmate to disclose whether he or she:

- Has been arrested or charged with a crime.
- Has ever been imprisoned and, if so, what the person was convicted of.
- Whether the person is on probation or parole and, if so, what offense the person was on probation or parole for.<sup>161</sup>

This form must be completed by any person over the age of twelve who wishes to visit an inmate.<sup>162</sup> In deciding whether the nature or extent of a person's criminal history disqualifies them from visitation privileges, the DOC considers the following factors:

- Whether the person has been released from prison in any jurisdiction for a felony conviction within the last two years, provided that the prospective visitor was not incarcerated in the facility in which visitation is requested.
- Whether the person has been released from prison in any jurisdiction for a felony conviction within the last five years if the prospective visitor was incarcerated in the facility in which visitation is requested.
- Whether the person has been released from jail in any jurisdiction for a misdemeanor conviction within the last year.
- Whether the person is on community supervision status (i.e. probation) or has been terminated from supervision within the past one year.<sup>163</sup>

If the DOC requires additional documentation of a charge to make a decision about visitation privileges, the prospective visitor must provide official documentation of the disposition or circumstances of the offense in question.<sup>164</sup>

## **Restrictions on State Employment and Professional Licenses Due to Drug Convictions**

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

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

- Has completed his or her sentence in its entirety, including probation;
- Is enrolled in or has completed a drug rehabilitation and treatment program; and
- Submits to periodic drug tests.<sup>165</sup>

## **Miscellaneous Employment Related Concerns**

### Practicing Law in Florida

Integrity and ethics are vital qualities for any attorney. Admission to the Florida Bar therefore includes an investigation into the character of each applicant. The primary purpose of this character and fitness investigation is “to protect the public and safeguard the judicial system.”<sup>166</sup> Each applicant must produce “satisfactory evidence of good moral character” to the Florida Board of Bar Examiners.<sup>167</sup>

Contacts with the juvenile or criminal justice system can jeopardize the aspirations of any person who seeks to become a lawyer. A person convicted of a felony is ineligible to apply for admission to the Florida Bar unless and until his or her civil rights have been restored.<sup>168</sup> Similarly, a person on felony probation where adjudication was withheld cannot apply for bar admission until the probationary period has ended.<sup>169</sup>

Even a juvenile or criminal case that does not result in a felony conviction can pose serious problems for an applicant. The Florida Bar’s character investigation examines whether an applicant can “avoid acts that are illegal, dishonest, fraudulent, or deceitful”<sup>170</sup> and comply with state and federal law.<sup>171</sup> Disqualifying conduct includes any behavior indicative of a lack of honesty or reliability, including any unlawful conduct.<sup>172</sup> In other words, even a withhold for a misdemeanor offense will raise a red flag for the Bar.

That is not to say that a criminal conviction will automatically ruin a bar application. Because the Bar is assessing the applicant’s present character, in looking at prior conduct it considers factors such as the applicant’s age at the time of the conduct; the recency of the conduct; and the seriousness of the conduct.<sup>173</sup> The Bar will also consider evidence of rehabilitation on the applicant’s part; the applicant’s positive social contributions since the incident; and the applicant’s candor in the application process about the misconduct.<sup>174</sup> A person who is rejected by the Bar may apply again after two years and provide a written statement describing evidence of the applicant’s rehabilitation.<sup>175</sup>

*Practice Tip:* Following a misdemeanor conviction or a withhold to a felony, a person who nevertheless wishes to one day practice law must understand the importance of demonstrating rehabilitation. Complying with all resulting court orders, successfully completing probation, and paying restitution can demonstrate a rehabilitated character to the Bar. Positive actions such as religious, community, or civic service can also help show the Bar that the applicant is now fit to serve as an attorney.

Perhaps the most important thing an applicant must be is honest about prior encounters with the criminal or juvenile justice system. Prior convictions, adjudications, delinquencies, and arrests should be fully disclosed while applying to law school and the Florida Bar. Failing to be honest about even a minor arrest or conviction can be more damaging to an applicant's chances than the charge itself.

### Court Appointed Guardians

In certain situations, a person who has become incapacitated may have a guardian appointed by the courts in order to safeguard his or her interests.<sup>176</sup> This can sometimes be necessary, for example, when a person is no longer able to manage his or her property or assets.

All court-appointed guardians, whether professional or non-professional, must pass a Level 2 background check.<sup>177</sup> A person who has been convicted of a felony cannot be appointed to be a guardian. A person who has been found guilty, regardless of adjudication, of any of the disqualifying offenses listed under Level 2 background check may not serve as a guardian.<sup>178</sup> A guardian can be removed upon being found guilty of any of these offenses.<sup>179</sup>

Courts sometimes appoint guardians ad litem to juveniles in criminal or civil proceedings. A guardian ad litem's role is to represent and advocate for the best interests of a child in these proceedings.<sup>180</sup> A person who wishes to serve as a volunteer with the guardian ad litem program must complete a Level 2 background check.<sup>181</sup> This requirement does not apply to members of the Florida Bar or licensed professionals who have undergone comparable background screening in the last five years.

### Car Dealerships

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

The owner of a car dealership in Florida has the right to designate a relative as the successor to the dealership in the event the owner dies, is incapacitated, or retires. The vehicle manufacturer may object to the succession, however, if the successor has been convicted of a felony or any crime of fraud, deceit, or moral turpitude.<sup>182</sup>

## **Education – Federal and State Concerns**

### **Education – Federal Student Aid**

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

- Possession of a Controlled Substance:
  - First Offense: One Year.
  - Second Offense: Two Years.
  - Third Offense: Indefinite.
- Sale of a Controlled Substance:
  - First Offense: Two Years.
  - Second Offense: Indefinite.<sup>183</sup>

**Restoring Eligibility for Federal Aid:** A student’s eligibility for federal aid such as loans and grants can be restored before the end of the ineligibility period if the student completes a drug rehabilitation program, or if the conviction is set aside or reversed.<sup>184</sup>

**Sex Offenses:** A person is not eligible for Federal Pell Grants if he or she is incarcerated for a sexual offense or is subject to involuntary civil commitment following release for a sexual offense.<sup>185</sup>

### **Education – State Law**

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

Prior to 2019, eligibility for any grant under the Bright Futures program required the applicant to not have a conviction or a withhold of any felony.<sup>186</sup> The only exception was if the Executive Office of Clemency has granted the student clemency. See the section on **Relief** for more details. However, if the applicant’s prior adjudication or withhold was for a delinquent act as a juvenile, the applicant would still be eligible to receive these scholarships.

In 2019, the Florida Legislature passed a criminal justice reform bill that provided that a person was still eligible for the Bright Futures program and other forms of educational aid even with a prior conviction, provided that the person has completed all terms of his or her sentence.<sup>187</sup>

**Stanley Tate Project STARS Scholarship Program:** The Stanley Tate Project provides certain economically disadvantaged high school students in Florida with prepaid college scholarships. Any student who receives this scholarship must avoid being convicted of any felony, first degree misdemeanor, or drug offense as a condition of receiving and keeping the scholarship.<sup>188</sup>

### **Disclosure of Prior Arrests**

As of 2019, every student is required at the time of initial registration for school in a school district to disclose previous school expulsions, arrests resulting in a charge, juvenile justice actions, and any corresponding referral to mental health services by the school district.<sup>189</sup>

**Notification of Conviction:** If a student of a public school is convicted of a felony, or found delinquent of an offense that would be a felony if committed by an adult, the court must notify the appropriate district school superintendent within two days.<sup>190</sup>

**Expulsion from Public School:** Public schools have the power to expel any student who has been found guilty of a felony or found to be delinquent of an act that would be a felony if committed by an adult.<sup>191</sup>

**Extracurricular Activities:** School boards may use their discretion to limit the participation in interscholastic extracurricular activities of any student who has been convicted of a felony or found delinquent of an offense that would be a felony if committed by an adult.<sup>192</sup>

**Removal from University Student Government:** All state universities are required to maintain procedures providing for the suspension or removal from student government of any student government officer convicted of a felony.<sup>193</sup>

**Expulsion from Public University:** A student of a state university in Florida may be expelled or otherwise disciplined upon violation any state, federal, or municipal law.<sup>194</sup> A student can obtain a waiver of expulsion if he or she provides substantial assistance in the arrest and prosecution of his or her accomplices, or the arrest and prosecution of any person engaged in drug offenses.<sup>195</sup>

### **Family Issues**

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

## **Eligibility for Placement of a Child**

Any person, including a parent, whose household is being considered by the DCF for the placement of a child is subject to a background check.<sup>196</sup> Any members of the person's household over the age of 12 are subject to a background check as well.

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

- Any felony in which the victim was a child;
- Child abuse, abandonment, or neglect;
- Child pornography;
- Domestic violence; or
- Homicide, sexual battery, or any felony involving violence, other than felony assault or felony battery where the victim was an adult.<sup>197</sup>

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

- Assault;
- Battery; or
- Any drug-related offense.<sup>198</sup>

Even if a person is not outright disqualified for placement due to his or her criminal record, DCF must consider the person's complete criminal history in deciding whether placement would jeopardize the child's safety.<sup>199</sup>

A person may move the court to review a decision to deny placement based on the background check. He or she will have the burden of providing sufficient evidence of rehabilitation to show that they would pose no threat to the child's safety if placement were to be allowed.<sup>200</sup> Evidence of rehabilitation includes consideration of how much time has passed since the incident, whether the person has paid restitution, and any other evidence indicating that the person will not present a danger to the child if the placement is allowed.<sup>201</sup>

## **Termination of Parental Rights**

Family courts have the power to hear petitions to terminate a person's parental rights. A petition can be filed by the DCF, a guardian ad litem, or by any person who has knowledge of the facts alleged in the petition.<sup>202</sup> In the event that a parent has been convicted of killing, either by murder or manslaughter, or conspiring to kill or soliciting the death of the other parent or another child of the parent, DCF is required to file a petition to terminate that parent's rights over the child.<sup>203</sup>

A valid petition to terminate a person's parental rights must allege facts that show granting the petition is in the manifest best interests of the child.<sup>204</sup> The petition must also allege facts establishing at least one of the certain enumerated grounds. These grounds include:

- The parent is incarcerated and:
  - Will remain incarcerated through a significant portion of the child's minority;<sup>205</sup>
  - Has been judicially determined to be a violent career criminal, a habitual violent felony offender, or a sexual predator;<sup>206</sup>
  - Has been convicted of first or second degree murder, or sexual battery constituting a first degree, life, or capital felony;<sup>207</sup> or
  - The court determines, by clear and convincing evidence, that continuing the parental relationship with the incarcerated parent would be harmful to the child.<sup>208</sup> In determining whether the parental relationship is harmful to the child the court can consider the parent's criminal history, including the frequency of incarceration.<sup>209</sup>
- The parent has subjected the child or another child to aggravated child abuse, sexual battery, sexual abuse, or chronic abuse;<sup>210</sup>
- The parent has been convicted of any offense requiring him or her to register as a sex offender;<sup>211</sup>
- The parent has committed the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or another child;<sup>212</sup> or
- The parent has as an extensive history of alcohol or controlled substance abuse which renders him or her incapable of caring for the child, and has refused or failed to complete available treatment over the last three years.<sup>213</sup>

### **Termination of Parental Rights Pending Adoption**

Courts have the power to terminate a person's parental rights while proceedings are pending to have the child adopted by a prospective adoptive parent.<sup>214</sup> One basis for terminating a person's parental rights is a finding that he or she has abandoned the child.<sup>215</sup> In determining whether a person has abandoned a child who is the subject of adoption proceedings, the court may consider whether the person is incarcerated and meets the additional criteria outlined above in the general termination of parental rights statute.<sup>216</sup>

### **Restrictions on Visitation Rights**

In any court proceeding brought under Chapter 39 ("Proceedings Relating To Children"), certain restrictions will be placed on the ability for a person to contact his or her child if that person has been convicted of certain crimes against that child.<sup>217</sup>

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

- Child abuse;
- Incest;
- Indecent exposure;
- Lewd or lascivious behavior;
- Removing a minor from the state or concealing a minor in violation of a court order; or
- Sexual battery.<sup>218</sup>

If a person convicted of any of these offenses wishes to begin or resume contact with the child, there will be a court hearing to determine whether contact is appropriate. At the hearing, the person would have to prove by clear and convincing evidence that the child's physical, mental, and emotional health would not be endangered by visitation. The court has the discretion to impose conditions or restrictions that it deems necessary to protect the child.<sup>219</sup>

When the DCF has decided to remove a child from the custody of a parent, the child's grandparents are entitled to reasonable visitation rights. However, if the court finds that such visitation is not in the best interests of the child, the grandparent will not be allowed to exercise visitation rights.<sup>220</sup>

In determining whether visitation is in the best interests of the child, the court can consider whether the grandparent has been found guilty, regardless of adjudication, of child abuse; concealing a minor in violation of a court order; incest; indecent exposure; lewd and lascivious conduct; or sexual battery.<sup>221</sup>

### **Parenting and Time-Sharing Plans Following Divorce or Separation**

Following a separation or divorce, courts often create parenting plans or time-schedules to govern how the child or children's time will be split between the two parents. Courts must order that both parents share the parental responsibility, unless the court finds that this would be detrimental to the child.<sup>222</sup>

Evidence that a parent has been convicted of a first degree misdemeanor or felony involving domestic violence, or of an offense that would qualify as a grounds for termination of the parental right, creates a "rebuttable presumption" that sharing the parental responsibility would be detrimental to the child.<sup>223</sup> "Rebuttal presumption" means the court will assume that shared parental responsibility would be harmful to the child, but will allow the parent to present evidence to the contrary. If the presumption is not rebutted, shared parental responsibility may not be granted to the convicted parent. However, the convicted parent is not relieved of any pre-existing obligation to provide financial support.<sup>224</sup>

Where a court is presented with evidence that there is a risk that a parent may violate a parenting plan by removing the child from the state or concealing the child's whereabouts, the court may

order the parent to post a bond as a financial deterrent to abducting the child.<sup>225</sup> In assessing the need for a bond, the court may consider whether either party has a history of domestic violence, child abuse, or child neglect.<sup>226</sup> The court may also consider a person's entire criminal record.<sup>227</sup>

## **Adoption**

An adoption entity must report to the court if it intends to place a child for adoption in the home of a person who is not a relative or stepparent of the child.<sup>228</sup> Before a child may be placed in an intended adoptive home, a preliminary home study of the household must be conducted and the finding must be favorable.<sup>229</sup> This study must include a criminal records check.<sup>230</sup> A minor cannot be placed in the home if the preliminary home study was unfavorable.

In addition, a minor cannot be placed into any home if a person lives there who has been determined by a court to be a sexual predator, or who has been convicted of first or second degree murder, or sexual battery in the first degree or higher.<sup>231</sup>

## **Civil Domestic Violence Injunction**

Florida law allows a person to petition the circuit court to issue an injunction for protection against domestic violence.<sup>232</sup> These injunctions are colloquially known as restraining orders. Although a judge can issue a domestic violence injunction regardless of whether the person accused of domestic violence has been convicted of any crime, a court can consider a person's "criminal history involving violence or the threat of violence" in deciding whether to issue the injunction.<sup>233</sup>

In issuing an injunction for protection against domestic violence, a court may order the person bound by the injunction to attend a batterers' intervention program. The court is required to order attendance with this program if the respondent has been convicted of any crime involving violence or the threat of violence, unless the court makes a finding that requiring the intervention program is inappropriate.<sup>234</sup>

## **Juvenile Collateral Consequences**

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

## **Juvenile Court**

When a child is tried in juvenile court, the state files a delinquency petition. Delinquency proceedings have their own rules of procedure. This procedure largely resembles that of an adult

trial, with the main exception being that there is no jury. Instead, the judge decides whether the state has proven that the juvenile committed a delinquent act.

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

A juvenile’s criminal record from juvenile court is confidential and exempt from Florida’s public records disclosure law.<sup>235</sup> However, the name, photograph, address, and crime or arrest report of a child is not confidential if the offense would have been a felony if committed by an adult.<sup>236</sup>

Traffic Offense Exception: A juvenile charged with a misdemeanor criminal traffic violation (such as reckless driving) will be tried in county court as opposed to the juvenile division in circuit court.<sup>237</sup> An adjudication in this proceeding will count as a conviction under Florida law.

### **Expunging Juvenile Records**

A personal’s juvenile criminal history is automatically expunged when the person turns 21.<sup>238</sup> A person between the ages of 18 and 21 can petition the court for early expunction.<sup>239</sup> However, this expunction happens at the age of 26 if the person was classified as a serious or habitual juvenile offender or was committed to a juvenile correctional facility.<sup>240</sup>

If a person who is 18 or older is charged with or convicted of a forcible felony and that person’s juvenile record has not yet been destroyed, that record merges with the person’s adult record.<sup>241</sup>

### **Juvenile Civil Citation**

A police officer has the discretion to issue a civil citation to a juvenile who has committed a minor delinquent act in lieu of arrest. A civil citation cannot be issued if the juvenile has previously committed four or more misdemeanor offenses.<sup>242</sup>

### **Adult Court**

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

Juveniles can be sent to adult court either by waiver; direct file; or by indictment. In some cases it is within the prosecutor's discretion where to have to juvenile tried.<sup>243</sup>

### Potential Sentences Facing Children Tried in Adult Court

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

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

- The person at least 18 years old or has been transferred to adult court from juvenile court;
- The person is under 21 years old at the time of sentencing (**not** at the time of the offense);
- The current offense is not a capital or life felony; and
- The person has not previously received a YO sanction.<sup>244</sup>

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

- Waive all statutory minimum mandatory sentences.<sup>245</sup>
- Sentence the defendant to below the bottom of the otherwise required sentencing guidelines.<sup>246</sup>
- Withhold adjudication even where doing so is explicitly prohibited by statute.<sup>247</sup>

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

- Probation or community control, where the total period of supervision is six years or less; or
- A split sentence of incarceration followed by probation or community control. If the defendant is sentenced to prison, the maximum sentence he or she may receive is four years in prison, followed by two years of probation or community control.<sup>248</sup>

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

- If the violation is technical (e.g., failing to abide by curfew), the maximum sentence the court may impose is six years in prison or the statutory maximum for the charged offense, whichever is lower.<sup>249</sup>
- If the violation is substantive (e.g., a new offense), the court may revoke the client's supervision term and sentence him or her to a term of incarceration up to the statutory maximum for the underlying offense.

*Practice Tip:* When dealing with a juvenile client charged with a serious offense, the preferred outcome is keeping him or her in juvenile court, or at least securing a juvenile adjudication in adult

court. While a YO sentence is preferable to an ordinary adult felony conviction, it nevertheless carries all of the baggage, disqualifications, and collateral consequences as any felony conviction.

### **Education Consequences for Juveniles**

School districts in Florida are required to adopt a zero tolerance policy with regards to students who engage in actions that pose a serious threat to safety. These policies are not meant to be applied to every fight, minor disturbance, or misdemeanor.<sup>250</sup> However, for certain serious offenses schools are required to notify the authorities and even expel the student.

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

- Bringing or possessing a firearm at school, on school property, or at a school function; or
- Making a false report or threat to school personnel, property, transportation, or a school-sponsored activity.<sup>251</sup>

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

A student who commits an assault, battery, or aggravated assault or battery on a school district employee must be expelled or placed in an alternative school setting or other program.<sup>252</sup>

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

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

The DJJ will notify the school district of the conviction or delinquency, regardless of adjudication. The school district in turn will ensure that any stay away or no contact order is enforced, and ensure that the offender does not attend the same school or ride on the same bus as the victim. If there is no other school available to the offender and he or she has to attend the same school as the victim, the school will take steps to keep them separated. Additional transportation costs that arise out of those requirements will be the responsibility of the juvenile and/or his or her family.<sup>253</sup>

If a juvenile is taken into custody for any offense that is a crime of violence or that would be a felony if committed by an adult, law enforcement must notify the school district superintendent about the allegation.<sup>254</sup> If a child is formally charged with a felony or a delinquent act that would be a felony if committed by an adult, the prosecutor must notify the superintendent of the child's school, who in turn must notify appropriate school personnel, including the principal of and the school's director of transportation.<sup>255</sup>

For more information on the post-secondary educational consequences of a conviction, please see the [Education](#) section.

### **Driving Privilege Consequences for Juveniles**

A juvenile convicted of any traffic offense that would cause an adult to lose their license (drag racing for example) will likewise lose his or her learner's permit or license.<sup>256</sup> A juvenile who fails to pay court costs or non-criminal traffic tickets can also lose his or her driving privilege. In addition, certain offenses can result in a license suspension for juveniles:

- **Firearms:** If a juvenile is convicted or adjudicated delinquent of possessing a firearm, for the first offense his or her learner's permit or license may be suspended for up to one year.<sup>257</sup> For a second or subsequent offense, the juvenile's license may be suspended for up to two years.<sup>258</sup>
- **Theft:** A juvenile adjudicated delinquent or found guilty as an adult of petit theft or misdemeanor retail theft may have his or her learner's permit or license revoked for six months to a year, rather than being sentenced to probation, secure detention, or incarceration.<sup>259</sup> This option is only possible if the juvenile has not previously been convicted of any criminal offense, regardless of adjudication.
- **Drugs and alcohol:** If a juvenile is found guilty or adjudicated delinquent for underage possession of alcohol, selling or providing alcohol to a minor, or any drug offense, his or her learner's permit or license can be revoked for up to one year for the first offense, and revoked for up to two years for subsequent offenses.<sup>260</sup>

### **Firearms and Juveniles**

Any firearm unlawfully possessed by a minor will be seized by law enforcement upon arrest and disposed of.<sup>261</sup> Furthermore, law enforcement agencies may release the name of any juvenile who has been convicted of any offense involving the use or possession of a firearm.<sup>262</sup>

A person who is less than 24 years old and was previously found to be delinquent of an offense that would be a felony if committed by an adult may not ever possess ammunition or a firearm, unless his or her civil right to possess firearms has been restored.<sup>263</sup>

## Juvenile Sexual Offenders

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

- Lewd and lascivious battery with a person under 16 involving force;
- Lewd and lascivious molestation;
- Lewd and lascivious conduct involving force; or
- Sexual battery.<sup>264</sup>

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

- Coercing another into prostitution;
- Deriving proceeds from prostitution;
- Lewdness or indecent exposure;
- Sexual performance by a child;
- Sexual battery;
- Transmitting obscene material to a minor; or
- Any felony involving “juvenile sexual abuse.” Juvenile sexual abuse is any nonconsensual or coercive sexual behavior.<sup>265</sup>

Commitment: At a juvenile sexual offender disposition hearing (the equivalent of a sentencing hearing in juvenile cases), the child may be committed to a program for juvenile sexual offenders. If this occurs, the period of commitment is indeterminate (in other words, not defined) but cannot exceed the juvenile’s 21st birthday or the maximum term of imprisonment that an adult may serve for the same offense.<sup>266</sup>

Alternative Treatment: Instead of juvenile sexual offender commitment, a court has the power to consider whether a community-based treatment alternative is appropriate. If the court orders such an alternative, the juvenile will undergo outpatient juvenile sexual offender treatment for up to three years. If the juvenile violates any condition of his or her treatment plan, the court can revoke the alternative treatment and order commitment.<sup>267</sup>

Notification: If a juvenile is in the custody or under the supervision of the DJJ and has been accused of juvenile sexual abuse or pled or been found guilty, regardless of adjudication, of certain sexual offenses, the DJJ shall disclose the presence of the child to the relevant school district superintendent.<sup>268</sup>

Similarly, the DJJ must notify schools, law enforcement agencies, and the court when a juvenile sexual offender returns to the community.<sup>269</sup> The FDLE or local law enforcement in turn will

release the juvenile's identifying information to any person who requests it and to the community at large if it decides that is necessary for the protection of the community.<sup>270</sup>

## **Immigration Issues**

A non-citizen's immigration status can be seriously impacted by a criminal conviction. A person can become deportable, inadmissible, ineligible to adjust status to U.S. Citizenship, or obtain relief such as asylum or Temporary Protected Status following certain convictions. Recognizing the gravity of these consequences, the Supreme Court ruled in 2010 that a defense attorney has an affirmative obligation to inform a client about the potential immigration consequences of a plea offer.<sup>271</sup>

*Practice Tip:* The failure to inform a client about the immigration consequences of a plea can constitute ineffective assistance of counsel. Any criminal defense attorney should become familiarized with the contours of this area of law. Consultation with an outside expert in immigration law may sometimes be a good idea to ensure that the client is being fully and properly advised. It is also important to remember that because immigration law is federal, a withhold of adjudication in Florida will still count as a conviction for purposes of federal law.<sup>272</sup>

Because federal immigration law is voluminous and complex, a complete analysis of immigration consequences is beyond the scope of this publication. This manual discusses the specific areas of inadmissibility and deportability.

## **Inadmissibility**

Admissibility refers to a non-citizen's ability to legally enter, remain, or adjust their status. Becoming inadmissible can impact any non-citizen who may seek entry, re-entry, or adjustment of status in the United States.

The following are grounds for inadmissibility:

- A conviction for or admitting to having committed a crime of moral turpitude;
  - Federal case law determines whether a state or federal crime is one of "moral turpitude." Examples of crimes of moral turpitude include burglary and crimes of violence (where the sentence is less than a year).
- A conviction for or admitting to having committed any controlled substance violation;
  - It is possible to secure a waiver if the non-citizen's only drug offense pertains to possession of less than 30 grams of marijuana.
- A conviction for two or more offenses, if the aggregate of the sentences was more than five years of confinement;
- Having engaged in prostitution or commercialized vice within the last 10 years; or
- Illegal presence in the country (i.e., remaining in the country without legal authorization).<sup>273</sup>

## Deportability

A non-citizen who has been formally admitted into the United States may be subject to deportation following certain convictions. This risk applies to immigrants (such as lawful permanent residents) as well as non-immigrants (people visiting the U.S. on a visa). The following can be grounds for deportation:

- Being unlawfully in the country while inadmissible or in violation of immigration law, including remaining on a revoked visa or violating a condition of entry;
- A conviction for a crime of moral turpitude within five years of admission, provided the offense was punishable by a year or more in prison (i.e., was a felony);
- A conviction for two or more crimes of moral turpitude, without regard for when the convictions occurred or whether they were felonies;
- A conviction for an aggravated felony;
  - Examples of aggravated felonies include murder, rape, sexual crimes against children, drug trafficking, and kidnapping. The chances of deportation are very high following a conviction for such an offense. Any crime of violence or burglary, theft, perjury, or obstruction of justice that rises to the level of a felony is also an aggravated felony.
- A conviction for any drug law, except for simple possession of less than 30 grams of marijuana;
- A conviction for a firearms offense (e.g., unlawfully purchasing, selling, or possessing a firearm);
- A conviction for a crime of domestic violence, stalking, child abuse, or violation of a protection order;
- A conviction for human trafficking;
- A conviction for high speed flight from an immigration checkpoint;
- A conviction under federal law for failing to register as a sex offender; or
- A conviction for the falsification of immigration documents.<sup>274</sup>

The above list is not exhaustive. Other convictions for less common crimes that can trigger deportation can be found in 8 U.S.C. § 1227.

*Practice Tip:* Multiple convictions for misdemeanors that constitute crimes of moral turpitude can trigger deportation consequences. Non-citizens charged with such misdemeanors (like petit theft) should be made aware of this possibility.

## Other Immigration Consequences

A criminal conviction or history can also adversely impact a non-citizen's ability to seek asylum, become a lawful permanent resident, or become a citizen. Some of these issues will depend on the non-citizen's country of origin.

For example, as a matter of foreign policy the United States use to not deport people to Cuba. However, in December 2014 the Obama Administration declared an intent to normalize relations with Cuba. In January of 2017, the United States formally ended the “wet foot / dry foot” policy, which had previously expedited Cuban nationals for “legal permanent resident” status if they reached the U.S. mainland. It is now very possible that the federal government will resume deporting Cuban citizens convicted of deportable offenses. Practitioners of criminal law in South Florida and elsewhere should remain on top of developments in this area.

A juvenile adjudication is not a "conviction" for immigration purposes. However, it does have negative immigration consequences. DHS/ICE will consider "Bad Acts" of a juvenile, which cover prostitution, drug trafficking, drug abuse, domestic violence, mental disability, gang activity and certain sex offenses.

*Practice tip:* The immigration consequences of a case depend on the nature of the charge, the non-citizen’s legal status, country of origin, and his or her future goals. It is worth repeating that consulting an expert in immigration law is always a good idea to ensure that a defendant is properly advised.

## **Property Forfeiture**

### **The Florida Contraband Forfeiture Act**

The Florida Contraband Forfeiture Act allows for the seizure and forfeiture of certain personal or real property that is designated as contraband.<sup>275</sup> Civil forfeiture actions are heard in the civil division of the Circuit Court and are controlled by the Rules of Civil Procedure.<sup>276</sup>

Contraband includes:

- Any controlled substance;
- Any substance, device, paraphernalia, or currency used to violate a controlled substance law, provided the state can prove a connection between the article and narcotics activity;
- Gambling paraphernalia, lottery tickets, money, or currency used in violation of state gambling laws;
- Any equipment, liquid, or solid used in violation of state beverage and tobacco laws;
- Motor fuel upon which the motor fuel tax has not been paid;
- Any personal property (e.g., cars, planes, boats currency, weapons, tools) or real property (e.g., title to land) used to commit a felony, or acquired by proceeds that violate the Florida Contraband Forfeiture Act;
- Any vehicle unlawfully offered for sale by a nonresident who is unqualified as a dealer;
- Any vehicle driven by a person driving under the influence if his or her driver’s license was actively suspended for a prior DUI;

- Any video or photo taken in violation of the video voyeurism statute; or
- Any personal or real property acquired by proceeds obtained through Medicaid fraud.<sup>277</sup>

It is against the law to possess, transport, or sell any of the above contraband.<sup>278</sup> In the event that the possession of any of the above contraband is in itself a felony (e.g., possession of cocaine), the car, vessel, aircraft, or other personal or real property on which the contraband is located will also be subject to forfeiture as contraband.<sup>279</sup> However, a seizure of property may occur only if the property's owner is arrested for a criminal offense that forms the basis for determining that the property is contraband.<sup>280</sup>

Once the property has been seized, the law enforcement agency that did the seizure acquires all rights to the property, though it cannot use or sell it until the agency's rights to the property are perfected (perfection means the agency has full right to and owns the property completely).<sup>281</sup>

Property may not be forfeited without the law enforcement agency first proving by a preponderance of the evidence that the owner knew or should have known that the property was being used for criminal activity.<sup>282</sup>

### **Personal Property**

Personal property can be seized by law enforcement at the time of the violation, so long as the owner of the property is given notice of his or her right to an adversarial preliminary hearing.<sup>283</sup> At this hearing the seizing agency has to establish probable cause that the property was used in a manner violating the Forfeiture Act.<sup>284</sup>

The decision to seize currency must be made by a supervisor in the law enforcement agency.<sup>285</sup>

### **Real Property**

Real property is afforded slightly more protection from forfeiture than personal property. Real property cannot be seized under the Forfeiture Act until the owner of the property is given the opportunity to attend a pre-seizure adversarial preliminary hearing.<sup>286</sup>

### **Jointly Owned Property**

Property that is jointly owned by spouses cannot be subject to forfeiture unless the law enforcement agency can show by a preponderance of the evidence that the co-owner knew or should have known that the property was being used for criminal activity.<sup>287</sup>

## **The Forfeiture Hearing**

At any civil forfeiture hearing, the law enforcement agency must prove beyond a reasonable doubt that the contraband article was being used in violation of the Florida Contraband Forfeiture Act.<sup>288</sup> If this burden of proof is met, the state's right to the article of property has been perfected – they now fully own the property.

If the agency fails to make this showing, the claimant is entitled to the immediate return of the property unless the agency appeals.<sup>289</sup> Upon prevailing, the seizing agency cannot assess any towing charges, storage fees, administrative costs, or maintenance costs against the claimant with respect to the returned property.

## **Other Types Of Forfeiture**

### Firearms and Weapons

Following any arrest, the arresting officer must seize any weapons found on a person and give them to the county sheriff or the police chief of the municipality where the offense occurred.<sup>290</sup> The sheriff or police chief is required to maintain possession of the weapon until after the trial of the person arrested.

If a person is convicted of any offense involving the use of a weapon, that weapon will be forfeited to the state.<sup>291</sup> However, a person is entitled to the return of a weapon if he or she is acquitted or if the charge is dismissed.<sup>292</sup>

### Gambling Proceeds

All money or prizes obtained through an illegal gambling operation are subject to forfeiture in a civil action brought by the Department of Legal Affairs or a state attorney.<sup>293</sup>

### Racketeering

Under the Florida RICO Act, it is illegal to use proceeds knowingly obtained from racketeering to acquire the rights to real property (e.g., land) or the rights to the ownership of a business.<sup>294</sup> A person convicted of racketeering may be ordered to divest himself or herself of any interest in the enterprise.<sup>295</sup> Furthermore, all real and personal property used in a racketeering scheme or derived from racketeering is subject to civil forfeiture.<sup>296</sup>

### Illegal Fishing Equipment

A person convicted of using illegal fishing equipment will have the property seized and forfeited.<sup>297</sup> A person can also have fishing equipment, including boats and vehicles, confiscated following a conviction for the illegal possession of saltwater products.<sup>298</sup>

## Alcohol Forfeiture

A person accused of violating state liquor law can have the alcohol in question seized by the police. If the person is convicted, the police can sell or destroy the alcohol.<sup>299</sup>

## **Subsequent Criminal Cases and Interactions with Law Enforcement**

Police officers can access a person's criminal record through their computers or dispatch. During police-citizen interactions, the officer will most likely become aware of the citizen's prior record. Officers often have a great deal of discretion in deciding whether to arrest someone. In situations involving low-level offenses, prior convictions can make the difference between being let go with a warning and being arrested.

## **Pre-trial Bond**

Under the Florida Constitution, there is a presumption that all defendants are entitled to pre-trial release on reasonable conditions.<sup>300</sup> The purpose of release conditions is to ensure the safety of the community and the defendant's appearance at trial. In determining whether to grant a defendant accused of a crime a bond or some other form of pre-trial release, the judge will consider the defendant's prior convictions.<sup>301</sup> Prior convictions can reduce the chances of release on non-monetary conditions and can result in an elevated bond.

In certain situations a defendant can be detained pretrial without bond. These include:

- The defendant is charged with a dangerous crime (certain serious felonies and any act of domestic violence, including misdemeanors) and the court finds there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons;<sup>302</sup>
  - A defendant's prior convictions are relevant to that assessment.
- The defendant is charged with DUI manslaughter and has previously been convicted of DUI or driving with a suspended license;<sup>303</sup> or
- The defendant was on probation or parole at the time of the new offense.<sup>304</sup>

## **Pre-trial Intervention Programs (Diversion)**

A defendant charged with a misdemeanor or a third degree felony may be eligible for a pretrial intervention program (PTI).<sup>305</sup> This program involves counseling, supervision, and treatment. The successful completion of PTI will result in the dismissal of the charges.<sup>306</sup> To be eligible for PTI, the defendant must have no prior convictions or no more than one prior conviction for a nonviolent misdemeanor.<sup>307</sup>

*Practice tip:* A first time defendant should be made aware of the possibility of PTI, and should also know that a conviction for a violent misdemeanor or a felony may close the door to PTI in future cases.

**Substance Abuse Exception:** A person charged with a non-violent felony and who has a substance abuse problem, or a person charged with second or third degree felony purchase or possession of a controlled substance, prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud, may be eligible for a pretrial substance abuse education and treatment intervention program, commonly administered through the drug court, provided the person has no prior felony convictions.<sup>308</sup> In effect, this allows PTI for people who would otherwise be ineligible due to the degree of the charge or multiple prior nonviolent misdemeanor convictions. However, if a person wants to transfer the drug court case supervision to another county, the person will be required to enter a plea, and thus potentially trigger all the serious consequences listed in this manual.<sup>309</sup>

In Miami-Dade County, a person with drug-related prior convictions may also be eligible for Drug Court. This program, overseen by the court system, is designed to help the defendant overcome his or her drug problem and can result in a case being dismissed. For more information, see <http://www.miamidrugcourt.com/>.

## **Plea Bargaining**

As the Supreme Court itself has come to recognize, “criminal justice today is for the most part a system of pleas, not a system of trials.”<sup>310</sup> The majority of cases resolve through a negotiated plea bargain. This is partly because Florida’s statutory sentencing scheme, minimum mandatory sentences, and sentencing enhancements often make the risks of going to trial far too high for the average defendant.

There is very little that limits the prosecutor’s discretion in plea bargaining. Subject to very few checks grounded in due process, a prosecutor is typically free to offer whatever plea bargain he or she chooses. However, in cases involving physical or emotional injury or trauma to the victim, or cases with a minor victim or a homicide, the prosecutor must consult the victim, the minor’s family, or the decedent’s family about any plea agreement and possible sentence.<sup>311</sup>

In calculating a plea bargain, prosecutors consider the severity of the current charge, the facts of the case, the victim’s wishes, and the aggravating and mitigating factors. This includes an examination of the defendant’s prior record. As a rule of thumb, the more prior convictions a defendant has, the worse the plea he or she will be offered.

## **Impact on Subsequent Testimony**

A conviction can have serious consequences on a person's chances of being believed in future legal situations. The credibility of any witness in Florida may be impeached with a qualifying conviction. To qualify, the prior conviction must be for an offense punishable by over one year in prison (i.e., a felony).<sup>312</sup> If the conviction was for a crime involving dishonesty or a false statement, it can be used to impeach the witness regardless of whether the crime was a felony or a misdemeanor. However, this impeachment cannot be done in civil trials if the conviction is too old to have any bearing on the witness' credibility. No witness may be impeached with his or her prior juvenile adjudications.

## **Reclassification of Offenses**

Certain misdemeanor offenses can become felonies if the defendant has been convicted of them in the past:

- A person who commits misdemeanor battery and who has a prior conviction for battery, aggravated battery, or felony battery can be charged with a felony.<sup>313</sup>
- A person who commits petit theft and has two prior convictions for petit theft can be charged with a felony.<sup>314</sup>
- A person who commits DUI and has three prior DUI convictions can be charged with a felony.<sup>315</sup>
- A person who commits the offense of driving with a suspended license and has two or more prior convictions for this offense can be charged with a felony.<sup>316</sup>
- A person who fraudulently sells an electronic benefits transfer (EBT) card and has been previously convicted of this offense can be charged with a felony.<sup>317</sup>
- A person who violates a domestic violence injunctions and has two or more prior convictions for this offense against the same victim can be charged with a felony.<sup>318</sup>
- A person who threatens a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, elected official, or any of their family members with death or serious bodily harm can be charged with a felony if he or she has two prior convictions for this offense.<sup>319</sup>
- A person who procures another for purposes of human trafficking can be charged with a third degree felony if he or she has a prior conviction, and a second degree felony with two or more prior convictions.<sup>320</sup>
- A person who commits the offense of sexual cyber harassment can be charged with a felony if he or she has previously been convicted of this offense.<sup>321</sup> A person who violates an injunction for protection against exploitation of a vulnerable adult can be charged with a felony if he or she has two prior convictions for this offense.<sup>322</sup>

## **Sentencing Enhancements**

There are various sentencing enhancements in Florida that can or sometimes must be imposed on a defendant due to his or her prior record. These enhancements increase the maximum time a defendant will serve for an offense, impose a mandatory minimum sentence, or both.

Habitual Offender: A defendant convicted of a felony offense and who has at least two prior felony convictions can be sentenced as a habitual offender (“HO”). This enhancement increases the maximum for the sentencing offense as follows:

- From 5 years to 10 years for a third degree felony.
- From 15 years to 30 years for a second degree felony.
- From 30 years to life for a first degree felony.

This enhancement cannot be imposed if the sentencing offense and one of the prior felony convictions are for the purchase or possession of a controlled substance.<sup>323</sup>

Habitual Violent Offender: A defendant convicted of a felony offense and who has at least one prior felony conviction for certain enumerated, violent crimes can be sentenced as a habitual violent offender (“HVO”). This increases the potential maximum for the sentencing offense, like an HO. It also requires the following mandatory minimum sentences to be imposed:

- 5 years for a third degree felony.
- 10 years for a second degree felony.
- 15 years for a first degree felony or a felony punishable by up to life.<sup>324</sup>

Three-time Violent Felony Offender: A defendant convicted of certain felonies and who has at least two prior adult convictions for certain enumerated, violent crimes can be sentenced as a three-time violent felony offender (“3x VO”). Unlike HVO, the sentencing offense must also be one of the enumerated violent offenses. This sentencing enhancement requires the trial court to impose the following mandatory minimum sentences:

- 5 years for a third degree felony.
- 15 years for a second degree felony
- 30 years for a first degree felony.
- Life in prison for any life felony.<sup>325</sup>

Violent Career Criminal (Gort Act): A defendant convicted of certain felonies and who has at least three prior adult convictions for certain enumerated, violent crimes can be sentenced as a three-time violent felony offender (“GORT”). Like the 3x VO enhancement, the sentencing offense must also be one of the enumerated violent offenses. This sentencing enhancement works in the following way:

- Increases the maximum sentence for third degree felonies to 15 years and requires a 10 year mandatory minimum sentence.
- Increases the maximum sentence for second degree felonies to 40 years and requires a 30 year mandatory minimum sentence.
- Requires a mandatory life sentence be imposed for first degree or life felonies.<sup>326</sup>

Prison Releasee Reoffender Enhancement: A defendant who commits certain felonies within three years of being released from prison or while serving a prison sentence can be sentenced as a prison releasee reoffender (“PRR”). The defendant’s sentencing offense must be one of the enumerated offenses, which includes any forcible felony and a burglary of an occupied structure

or dwelling. This sentencing enhancement requires the trial court to impose the following mandatory minimum sentences:

- 5 years for a third degree felony.
- 15 years for a second degree felony
- 30 years for a first degree felony.
- Life in prison for any offense punishable by up to life.<sup>327</sup>

Timing: To qualify for an HO, HVO, or 3x VO sentencing enhancement, one of the defendant's previous felony convictions must have occurred within the last five years. A conviction is within the window if the defendant was on probation or supervision for it in the preceding five years.

Mandatory vs. Permissive: A trial court is statutorily required to impose a 3x VO, GORT, or PRR enhancement if the defendant qualifies for it. The court must also impose an HO or HVO sentence unless it files written findings that such a sentence is not necessary to protect the public.

Clemency: An HO, HVO, 3x VO, or GORT enhancement cannot be applied if a necessary predicate conviction was previously pardoned, reversed on appeal, or set aside in collateral proceedings.

## **Calculation of Sentence**

Florida, like many other jurisdictions, has adopted sentencing guidelines to be used in felony cases.<sup>328</sup> These guidelines calculate the minimum sentence a person convicted of a felony can receive. A withhold of adjudication counts as a prior offense when calculating a defendant's guidelines.<sup>329</sup>

A judge cannot go below the bottom of these guidelines without making written findings. The guideline calculation not only takes into account the severity of the current charge, but also considers every prior offense. Even if a defendant's prior convictions do not result in a sentencing enhancement, prior convictions will nevertheless raise the bottom of a defendant's sentencing guidelines in the future.

*Practice Tip*: In negotiating a plea, it is always preferable to obtain a plea to a crime of a lesser degree. While a plea offer for a serious charge that involves no prison time can be very appealing, this conviction can have serious consequences in future cases.

## **Post-trial Bond**

Following a conviction, certain defendants may seek a supersedeas bond to obtain post-trial release pending the outcome of the appeal. A person is not entitled to post-trial release if he or she has been convicted of a felony, has previously been convicted of a felony, and has not had his or her civil rights restored.<sup>330</sup>

*Practice Tip:* Even if a defendant has prior felony convictions, he or she can seek a post-conviction bond if he or she was only convicted of a misdemeanor.<sup>331</sup>

## **Felon Registration Requirements**

A person convicted of a felony in Florida must register with the county sheriff within 48 hours of the conviction. A person entering Florida who has been convicted in federal or state court of an offense that would be a felony in Florida must also register. The failure to register is a misdemeanor offense.<sup>332</sup>

A person is not required to register if five years have passed since he or she has been released from incarceration and completed probation for the felony conviction, unless he or she is a fugitive from justice on a felony charge or has been convicted of any offense since release.<sup>333</sup>

## **Firearms, Weapons, and Recreational Licenses**

### **Firearms - Federal Law**

Under federal law, a person may not possess a firearm or ammunition if he or she:

- Has been convicted of a felony in any jurisdiction, state or federal;
- Is a “fugitive from justice”;
- Is an unlawful user of or addicted to a controlled substance;
- Is under a court order that restrains the person from harassing, stalking, or threatening an intimate partner; or
- Has been convicted of any misdemeanor that qualifies as a crime of domestic violence.<sup>334</sup>

These restrictions can jeopardize a person’s ability to serve as a law enforcement officer or in the armed forces. See the Employment section for further details.

### **Firearms - State Law**

#### **General Ownership**

A person may not possess a firearm or ammunition in Florida if he or she has been convicted of a felony under any state or federal law.<sup>335</sup> A firearms dealer may not sell a firearm to a buyer without first requesting the FDLE to perform a criminal history record check.<sup>336</sup> A person who qualifies as a violent career criminal (even if he or she has never previously been sentenced as such) is additionally forbidden from possessing any electric weapon.<sup>337</sup>

## Concealed Weapons Permit

Ordinarily, a state agency may not deny an application for a permit or license based solely on the applicant's lack of civil rights<sup>338</sup> (a consequence of any felony conviction). However, this protection does not extend to applications for a license to carry a concealed weapon or firearm.

In Florida, it is illegal to carry a concealed weapon or firearm without a valid license.<sup>339</sup> The Department of Agriculture and Consumer Services has the power to issue a license authorizing a person to carry a concealed weapon.<sup>340</sup>

The following make a person ineligible to receive a concealed weapons permit:

- A conviction for a felony (a withhold does not count);<sup>341</sup>
- A conviction of any drug offense in Florida or in any other state, provided that the conviction occurred within the last three years;<sup>342</sup>
- A finding that the applicant chronically abuses drugs or alcohol; or
  - A person is presumed to be a chronic substance abuser if, in the three years preceding the application, he or she has been: convicted of using a firearm while under the influence; deemed a habitual offender under the disorderly intoxication statute (which requires three convictions for disorderly intoxication in a one-year period); or convicted two or more times of DUI.<sup>343</sup>
- A conviction or a withhold for any felony or misdemeanor that is a crime of domestic violence, unless three years have elapsed since the person successfully completed probation, or the person's record has been sealed or expunged.<sup>344</sup>

A person who already has a concealed weapons permit will have his or her license revoked upon conviction for the above offenses.<sup>345</sup>

*Practice Tip:* Even a misdemeanor can jeopardize a person's ability to obtain a concealed weapons permit if the charge is drug-related. While a person charged with possession of marijuana or possession of drug paraphernalia, both misdemeanors, may not be facing prison time, efforts should be made to avoid an adjudication if that person has any interest in obtaining or keeping a concealed weapons permit.

## Risk Protection Orders

Following the tragic shooting at the Marjory Douglas Stoneman Highschool in 2018, Florida enacted legislation allowing for law enforcement officers to petition a court for a "risk protection order," which can result in a court temporarily taking a person's firearms away from them.<sup>346</sup> In deciding whether to grant the petition, the court may consider whether the person has previously been convicted of any crime of domestic violence or any crime involving violence or the threat of violence.

## Relief: Specific Authority to Own, Possess, or Use Firearms

While a person can apply to the Florida Clemency Board for the restoration of his or her civil rights, this restoration will not automatically give a person the right to possess firearms again. The only way a person can lawfully possess a firearm following a felony conviction is to specifically apply for and obtain the specific authority to possess firearms. See the section on Relief and Civil Restoration for more details.

### **Body Armor**

While some states prohibit the ownership of body armor by convicted felons, Florida does not have such a blanket ban. The possession of body armor while committing certain serious, enumerated felonies, however, is in itself a crime.<sup>347</sup>

### **Boating**

A person who has been convicted of any criminal offense under the Florida Vessel Safety Law, regardless of whether adjudication was withheld, must complete a boating safety course.<sup>348</sup> A person must refrain from operating a vessel until this course has been completed. Offenses that trigger this requirement include leaving the scene of a boating accident, reckless operation of a vessel, boating under the influence, subsequent refusal to submit to a breath test, and knowingly operating a vessel in restricted safety zone.

### **Hunting and Fishing**

It is a crime to make a false sworn statement in order to obtain a recreational hunting or fishing license. A person who commits this offense will also have the license or permit in question voided.<sup>349</sup>

### **Civic and Civil Rights**

#### **Voting**

Prior to 2018, a person in Florida convicted of any felony was not allowed to vote unless his or her civil rights have been restored by the Governor.<sup>350</sup> A withhold of adjudication preserved the person's right to vote. However, other jurisdictions may consider a withhold to a felony charge to be a conviction, which could impact the person's ability to vote in other states.

In 2018, the Florida voters amended the State constitution through a ballot initiative known as “Amendment Four” to provide that a person convicted of a felony (other than murder or a felony sexual offense) would regain his or her right to vote “upon completion of all terms of sentence including parole or probation.”<sup>351</sup>

In response to this constitutional amendment, the Florida legislature passed a law providing that “completion of all terms of sentence” includes payment of restitution and all fines or fees to the court.<sup>352</sup> In May of 2020, a federal district court ruled that this statute was unconstitutional as applied to people unable to pay their fines or fees as a condition to getting their voting rights back.<sup>353</sup> The Governor signaled his intention to appeal this ruling and as of 2020 litigating on this issue is ongoing.

### **Elected Office and Public Service**

No person convicted of a felony may hold elected in Florida unless his or her civil rights have been restored.<sup>354</sup>

### **Jury Service**

A person may not serve on any federal jury if he or she is currently charged with or has been convicted in any state or federal court of any crime punishable by over one year in prison, unless that person’s civil rights have been restored.<sup>355</sup>

Florida law prohibits an even broader class of people from serving on juries. In Florida, a person may not serve on a jury if he or she is currently charged with or has been convicted, in any state or federal court or in any territory or country, of bribery, forgery, perjury, larceny, any felony, or any offense that would be a felony had it been committed in Florida.<sup>356</sup>

#### *Practice Tips:*

- While only felony convictions will deprive a person of the right to vote, even a conviction for second degree misdemeanor petit theft (e.g., taking a candy bar) can strip a person of the right to jury service. A client should be informed of this before accepting any plea offer involving a conviction in any misdemeanor larceny case.
- In criminal cases, the juror questionnaire asks prospective jurors about *any* contact with the criminal justice system, including arrests.<sup>357</sup> Prosecutors are entitled to ask about these contacts during jury selection, even if the case resulted in a withhold of adjudication or a dismissal. Potential jurors interested in exercising their civic rights should disclose all prior arrests during jury selection.

## Passport and Travel

A person is ineligible for a passport if he or she has been convicted of a federal or state felony drug offense and used a passport or crossed an international border in committing the offense.<sup>358</sup> This prohibition also applies to federal and state misdemeanor drug offenses. The period of ineligibility applies as long as the person is either imprisoned or on parole or supervised release following the conviction.

Different countries may deny visas or admission to any person with certain criminal convictions. This varies depending on the country and the offense. A person with a criminal history should contact the embassy or the consulate of the foreign country in question before traveling.

## Name Changes

A person cannot apply for a name change if his or her civil rights have been suspended without being later restored.<sup>359</sup>

## DNA Sample Collection

The Florida Legislature has directed the FDLE to create a DNA database to facilitate criminal investigations.<sup>360</sup> The DNA Database law requires the FDLE to obtain DNA samples from any “qualifying offender” who is arrested, incarcerated, or under court-ordered supervision (e.g., probation) in Florida.<sup>361</sup> “Qualifying offenders” include any person, including juveniles, who is:

- Committed to a county jail;
- Committed to the Department of Corrections;
- Committed to the Department of Juvenile Justice; or
- Transferred to Florida under the Interstate Compact on Juveniles or under the Interstate Corrections Compact;

*and* who has been:

- Convicted of any felony in Florida or a similar offense in another jurisdiction;
- Convicted of the certain enumerated misdemeanors (the most common being stalking and voyeurism);
- Convicted of any offense for the purpose of benefiting a criminal gang; or
- Arrested for any felony in Florida.<sup>362</sup>

A person convicted of a qualifying offense must pay the actual costs of collecting the DNA sample, unless the person is declared indigent by the court.<sup>363</sup> Law enforcement and correctional officers are entitled to use “reasonable force” to obtain a sample of a person who qualifies under the statute and refuses to provide a sample.<sup>364</sup> The willful refusal to provide a DNA sample by a person who qualifies under the statute is a second degree misdemeanor.<sup>365</sup>

There are limited ways to be removed from the DNA database following a qualifying conviction. If a qualifying conviction is overturned on direct appeal or set aside in a post-conviction proceeding, the person may provide the FDLE with a certified copy of a final court order establishing that the conviction has been overturned or vacated.<sup>366</sup> Once the FDLE verifies the accuracy of this information, it must remove the person's DNA sample from the database. However, a person is *not* entitled to be removed from the database if the FDLE determines that the person is otherwise required to submit a sample regardless of the overturned conviction.

A person seeking to have his or her information removed from the DNA database following a conviction being overturned or vacated should mail the certified documentation described above to the following address: FDLE DNA Investigative Support Database, P.O. Box 1489, Tallahassee, Florida 32302-1489.<sup>367</sup>

## **HIV Testing**

Mandatory Testing After Conviction: A person who has been convicted of the following offenses, regardless of whether adjudication was withheld, where the offense involved the transmission of body fluids, will be ordered to undergo HIV testing:

- Abuse or aggravated abuse of an elderly or disabled person;
- Assault, battery, assault or battery on a law enforcement officer, assault or battery on a person over 65, aggravated assault, aggravated battery;
- Child abuse and aggravated child abuse;
- Human trafficking;
- Incest;
- Knowingly donating blood while HIV positive;
- Lewd and lascivious offenses committed in the presence of a minor;
- Prostitution; or
- Sexual battery.<sup>368</sup>

Mandatory Testing upon Victim's Request: A person charged with the above offenses in a case involving the alleged transmission of body fluids will be forced to undergo an HIV and hepatitis testing upon the request of the victim.<sup>369</sup>

Mandatory Testing Before Release from Prison: If the Department of Corrections does not know an inmate's HIV status, the inmate must be tested for HIV prior to release from prison.<sup>370</sup>

## **Sexual Offenders**

People convicted of sexual offenses face some of the most severe collateral consequences possible. For many people these consequences will be for life. The failure to comply with the numerous

registration requirements can lead to further prosecution in itself. A person facing a conviction for a registration-eligible offense should be made aware of what sexual offender registration entails.

A conviction for the following offenses will require a person to register as a sex offender:

- Computer pornography, transmission of pornography by electronic device or equipment, transmission of material harmful to minors to a minor by electronic device or equipment;
- Human trafficking;
- Kidnapping, false imprisonment, or luring and enticing a child;
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16, elderly persons, or disabled persons;
- Procuring person under age of 18 for prostitution, selling or buying of minors into sex trafficking or prostitution, or selling or buying of minors;
- Sexual battery;
- Sexual misconduct with an inmate or a person with developmental disabilities or mental illness; Sexual performance by a child;
- Unlawful sexual activity with a minor; or
- Video voyeurism.<sup>371</sup>

## **Registration and Community Notification**

A person who qualifies as a sex offender must register with the sheriff's office in the county where the person resides (either permanently, temporarily, or transiently) within 48 hours of either establishing residency in the state or being released from prison.<sup>372</sup> A sex offender is required to provide law enforcement with his or her identifying information (including social security number, finger prints, palm prints, phone number, vehicle information, and e-mail addresses).<sup>373</sup> A sexual offender must also provide the FDLE with a DNA sample.<sup>374</sup>

Any change in a sexual offender's personal information, including but not limited to residence, name, e-mail address, and vehicle information must be reported to the sheriff.<sup>375</sup> The failure to comply with the registration requirements described in this section is a crime.<sup>376</sup>

Any person who requests information about a sexual offender kept by the Department of Corrections, the FDLE or the county sheriff is entitled to receive it.<sup>377</sup> Any law enforcement agency is permitted to inform the community about a registered sexual offender's presence. If the person has been designated a sexual predator (see below), the community must be notified about the person's presence.

## **Electronic Monitoring**

As of 2018, a person convicted of a sex offense who has not been sentenced to prison not sentenced to prison must be placed on six months of community control with electronic monitoring for a first

offense; one year of community control with electronic monitoring for a second offense; and two years of community control with electronic monitoring for a third or subsequent offense.<sup>378</sup>

## **Identification**

Within 48 hours of registering with the sheriff, a sexual offender must also obtain a driver's license or identification card from the Department of Highway Safety and Motor Vehicles.<sup>379</sup> This license or identification card will have the marking "sexual offender" printed on it.<sup>380</sup>

If a sex offender's license or identification is subject to renewal, or if the person changes his or her address or name, obtaining new identification is required.<sup>381</sup>

A person petitioning for a name change must disclose to the court whether he or she is required to register as a sexual offender. This is a factor the court will consider in determining whether to grant the request.<sup>382</sup>

## **Housing and Residency – Generally**

A sexual offender must notify the sheriff's office of any change of address. Furthermore, if the person intends to establish residency in another state, he or she must inform the Florida county sheriff of this at least 48 hours before the move.<sup>383</sup> The statewide law enforcement agency of the new jurisdiction where the sexual offenders intends to establish a residency will be notified about the person's intended residency.

Unsurprisingly, homelessness is a major problem for people required to register as sex offenders. Numerous restrictions are placed on where a sexual offender can live. A person convicted of certain specific sex offenses in which the victim was less than 16 years old is not allowed to live within 1,000 feet of any school, childcare facility, park, or playground.<sup>384</sup> However, a person will not be forced to move if he or she is living in a place that satisfies this requirement and a school, childcare facility, park, or playground is subsequently built within 1,000 feet of the residence.

Many, if not most, sex offenders end up homeless. Homelessness, however, does not exempt a person from sex offender registration requirements. A sexual offender who vacates his or her residence and cannot find a new residence must report to the sheriff's office within 48 hours of leaving the residence.<sup>385</sup> A person is a transient resident of a county must register with the sheriff within 48 hours of establishing a transient residence, and must report to the sheriff every 30 days thereafter.<sup>386</sup>

## **Housing and Residency – Miami-Dade County**

By ordinance, Miami-Dade County has more stringent restrictions on where sexual offenders can live compared to state law. In Miami-Dade, a person who has been convicted or found delinquent of the following offenses cannot live within **2,500** feet of a school:

- sexual battery;
- lewd and lascivious acts on persons under age 16;
- sexual performance by a child;
- sexual acts transmitted over computer;
- selling or buying of minors for portrayal in sexually explicit conduct; or
- a similar law of another jurisdiction where the victim was under 16.

A person is exempted from this restriction if: he or she lived in the residence prior to November of 2005; the school was opened after the person established residence; or if the person was a minor when the sexual offense occurred and received a juvenile sanction.<sup>387</sup>

A person required to register as a sexual offender who lives in a county besides Miami-Dade should consult his or her local ordinances to see if the county, like Miami-Dade, has stricter restrictions than those required by Florida state law.

Additionally, under Miami-Dade County ordinances, a registered sexual offender cannot knowingly be in a municipal park where children under the age of 16 are located, unless the person is a parent of a child who is also at the park.<sup>388</sup>

## **Employment**

Private Employment: A private employer is free to inquire about a person's criminal convictions. A person who is a registered sex offender will almost certainly face difficulties finding a job, especially considering the public nature of sex offender registries.

Public Employment: A sex offender is also ineligible for any state job that requires the person to pass a criminal background investigation.<sup>389</sup> Any state agency or government subdivision considering hiring a person to work or volunteer at any park, playground, daycare center, or other place where children regularly congregate must run a search of that person's name against the sex offender database.<sup>390</sup>

Professional Licenses: When registering with the authorities, a sex offender is required to disclose any professional licenses he or she has.<sup>391</sup> The loss of a professional license will likely result from a conviction for a sex offense. See the Employment section for more details.

## **Education**

A sex offender must report whether he or she is enrolled, employed, or volunteering at any institution of higher education in the state, including on-line courses. The sheriff is required to notify any such institution of the sexual offender's presence.<sup>392</sup>

### **Relief from Registration Requirements**

Ordinarily, a person designated as a sexual offender will be required to register for the rest of his or her life unless the person receives a full pardon or has the conviction set aside.<sup>393</sup> There are two other ways in which a person can be removed from the registration requirement.

A person can file a motion to remove the registration requirement and remove his or information from the state's sexual offender database if:

- The person was convicted (including a withhold) of a lewd and lascivious offense on a person younger than 16, sexual performance by a child, or lewd or lascivious exhibition using a computer;
- The person does not have a prior conviction for the above offenses;
- The only reason the person is required to register as a sexual offender or predator is because of a conviction for one of the above offenses; and
- The person was no more than four years older than the victim, and the victim was between the ages of 13 and 17.<sup>394</sup>

A person can also petition the court for the removal of the registration requirement if:

- 25 years have passed since the person was released from prison or supervision;
- The person has not been arrested for any felony or misdemeanor since release; and
- The person was not required to register due to a conviction for:
  - False imprisonment;
  - Kidnapping;
  - Lewd and lascivious battery if the victim was younger than 12 or if the offense involved force or coercion;
  - Lewd and lascivious molestation on a person younger than 12;
  - Lewd and lascivious molestation on a person between 12 and 16 if the offense involved the use of force; or
  - Sexual battery.<sup>395</sup>

### **Sexual Predators**

Certain convictions or repeat convictions can result in a person being designated as a sexual predator. Convictions for the following offenses will result in a sexual predator designation if the offense was a first degree felony or greater:

- Kidnapping or false imprisonment of a minor if the defendant is not the child's parent or guardian;
- Lewd or lascivious offense committed upon or in the presence of persons younger than 16;
- Selling or buying of minors; or
- Sexual battery.<sup>396</sup>

Repeat convictions for any offense that would require a person to register as a sexual offender will result in that person being designated as a sexual predator, regardless of the degree of the offenses.<sup>397</sup>

A designated sexual predator is subject to registration and public notification requirements similar to the requirements imposed on sexual offenders.<sup>398</sup> Please see the above section on Sexual Offenders above for more information.

### Involuntary Civil Commitment of Sexually Violent Predators

In Florida, a person who has been convicted of a sexually violent offense and has been designated as a sexually violent predator can be involuntarily committed following a civil commitment proceeding.

A sexually violent offense includes some of the most serious sexual crimes, but also includes any violent criminal act if it is determined beyond a reasonable doubt that the crime was sexually motivated.<sup>399</sup> In addition to being convicted for a sexually violent offense, to qualify as a sexually violent predator the person must also suffer from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined for long-term treatment.<sup>400</sup>

### Prosecutor's Referral for Civil Commitment

A prosecutor *may* refer a person for involuntary civil commitment if he or she:

- Is required to register as a sex offender;
- Has previously been convicted of a sexually violent offense; and
- Has been sentenced to a term of imprisonment in a county or municipal jail for any criminal offense.<sup>401</sup>

A prosecutor *must* refer a person for involuntary civil commitment if he or she:

- Is a sexually violent offender;
- Has been arrested for a criminal offense subsequent to his or her release from custody; and
- The person is subsequently sentenced to a term of imprisonment in a county or municipal jail for any criminal offense.<sup>402</sup>

*Practice Tip:* Even a misdemeanor conviction can result in civil commitment proceedings being initiated if the sentence includes jail time. A client with a prior history of sexual offenses should be made aware of this when deciding how to proceed in any misdemeanor case.

### Civil Commitment Proceedings

Following the recommendation of a multidisciplinary team, the prosecutor will initiate the civil commitment proceedings by filing a petition for involuntary civil commitment in circuit court.<sup>403</sup> What follows is essentially a civil trial with a jury where the state must prove by clear and convincing evidence that the respondent is a sexually violent predator.<sup>404</sup> This requires a unanimous jury verdict.

If the jury finds that the person is a sexually violent predator, following the completion of any prison sentence the person is committed to DCF custody for treatment. The person will remain involuntarily committed until he or she is deemed safe for release.<sup>405</sup>

### Civil Commitment

Once committed, a person will have his or her mental condition evaluated by a professional at least once a year. The committed person has a right to petition the court for his or her release on the grounds that he or she is no longer dangerous. Following such a petition, the court will hold a probable cause hearing to determine if it is safe to release the person. If probable cause is found, a trial on whether the person can safely be released will follow.<sup>406</sup>

Unlike a prison sentence, which is primarily meant to punish, the stated aim of involuntary civil commitment is providing treatment to the person and keeping the community safe. While a prison sentence must be definite (either a term of years or life), civil commitment is indefinite and can theoretically go on without a fixed end point for the rest of the person's life.

## **Appendix A: Professional Licenses**

In general, any professional license can be suspended or revoked following a conviction for an offense related to the field in question. §§ 455.227(1)(c), 456.072. The failure to report a qualifying conviction to a licensing board can be grounds for discipline in itself. Certain professional licenses may also require the applicant to prove good character and/or submit to a background check. This is often the case if the profession involves work inside other people's homes, providing healthcare services, or involves work with vulnerable groups.

### **Licenses Issued by the Department of Business and Professional Regulation**

**Alcoholic Beverages & Tobacco:** Any license related to the sale of alcohol requires the person to be of good moral character. No license can be issued to anyone who has been convicted in the last five years of violating the state Beverage Law, any prostitution related offense, or any drug offense. No license can be issued to anyone who has been convicted of a felony within the last 15 years. West's F.S.A. § 561.15. Additionally, a conviction for battery, perjury, or fraud within the last five years will also disqualify a person from obtaining a liquor license. Fla. Admin. Code r. 61A-1.017.

**Architecture & Interior Design:** An architect may be denied licensure or disciplined if he or she has been convicted, regardless of adjudication, of any offense that directly relates to the practice of architecture or the ability to practice architecture. § 481.213.

**Athlete Agents:** The applicant must provide fingers prints for a criminal history records check and prove good moral character. § 468.453

**Auctioneers:** An auctioneer may be denied licensure or disciplined if he or she has been convicted, regardless of adjudication, of any offense that directly relates to the practice or the ability to practice the profession of auctioneering. If already licensed, the standard penalty is a \$1,000 fine and a license suspension. § 468.385, § 468.389; Fla. Admin. Code r. 61G2-7.030.

**Boxing, Kick Boxing & Mixed Martial Arts:** All boxing relating jobs require a license from the State Athletic Commission (announcer, timekeeper, judge, physician, trainer, manager, promoter, foreign co-promoter, referee, participant, matchmaker, booking agent, representative of a booking agent or concessionaire for any match). A person cannot receive a license if he or she has ever been convicted of violating any provision of Chapter 548 (Florida's boxing laws). Fla. Admin. Code r. 61K1-1.003.

**Building Code Administrators & Inspectors:** The applicant for a building code inspection license, who has previously been convicted of a felony, will either be denied a license or receive a license on a probationary basis. A licensee convicted of a felony will be fined and will have his or license suspended or revoked. Fla. Admin. Code r. 61G19-5.002.

**Certified Public Accounting:** The applicant for a license as a certified public accountant must provide proof of good moral character, including a respect for the law. An applicant may be denied a license or a licensee may be disciplined for a conviction for any offense related to public accounting regardless of adjudication. § 473.308; § 473.323.

**Community Association Managers:** The applicant must provide criminals record for all felonies or misdemeanors where he or she was found guilty, regardless of adjudication or any no contest plea. This includes offenses that were pardoned or where civil rights have been restored, but does not include cases that have been expunged or sealed. Fla. Admin. Code r. 61-20.001.

**Construction Contractor:** A licensed contractor in the construction industry may be sanctioned if convicted of any offense, regardless of adjudication, which directly relates to the practice of contracting or the ability to practice contracting. § 489.129. The penalties range from a \$2,500 to \$10,000 fine with a license suspension or revocation. Fla. Admin. Code r. 61G4-17.001.

**Electrical Contractors:** To be registered with the Electrical Contractors' Licensing Board, an applicant must be a good moral character. This includes showing "a personal history of honesty, fairness, and respect for the rights of others and for state and federal law." § 489.513. An electrical contractor is subject to fines or license revocation if he or she is convicted of any crime that directly relates to the practice of electrical or alarm system contracting or the ability to practice electrical or alarm system contracting. § 489.533.

**Employee Leasing Companies:** Anyone seeking to form an employee leasing company must apply for a license. The application process requires proof of good moral character, which includes establishing the applicant's respect for "for the laws of this state and nation." The applicant will be subjected to a background check and will have to provide a set of fingerprints.

Most convictions will not automatically disqualify the applicant. The Board will consider the type of crime committed, the crime's relevancy to the employee leasing industry, the length of time since the conviction, and any other relevant factors showing rehabilitation. Convictions that will automatically resulting in a denial of licensure include fraud, perjury, theft or embezzlement of any money or thing of value, sale or use of any controlled substance, tax evasion, or the filing of any false document with any government agency. § 468.525; Fla. Admin. Code r. 61G7-5.001.

**Engineers:** A licensed engineer may be disciplined upon being convicted of any offense, regardless of adjudication, which directly relates to the practice of engineering or the ability to practice engineering. § 471.033(1)(d). An engineer can also be sanctioned if he or she violates any state law directly regulating the practice of engineering. Fla. Admin. Code r. 61G15-19.001(6)(n). The penalties for a conviction depend on the severity of the offense and range from a fine and a probationary period to license revocation. Fla. Admin. Code r. 61G15-19.004.

**Geologists:** Like other licensed professions, a licensed geologist may be disciplined following a conviction, regardless of adjudication, that relates to the practice of geology. Penalties range

from a fine to license denial or revocation, even for a first offense. Fla. Admin. Code r. 61G16-9.001.

**Home Inspectors:** The applicant must show good moral character, which includes a criminal history records check. A person can be denied a home inspector's license if he or she has been convicted, regardless of adjudication, of crime that directly relates to the profession of home inspector. This includes: fraud, theft, burglary, bribery, arson, dealing in stolen property, forgery, uttering a forged instrument, sexual battery, lewd conduct, child or adult abuse, murder, manslaughter, assault, battery, and perjury. Fla. Admin. Code r. 61-30.102.

**Landscape Architecture:** A licensed landscape architect can face fines or license suspension or revocation following a conviction for any offense that relates to the practice of landscape architecture. Fla. Admin. Code r. 61G10-14.003.

**Loan Originator:** An applicant must provide a set of electronic fingerprints for a state criminal background check and a traditional set of fingerprints for a federal background check. Fla. Admin. Code r. 69V-40.0312.

**Merchant Seaman:** Any person interested in applying to be a master, mate, engineer, pilot, operator, or radio officer on a merchant ship must apply for a license. The licensing secretary has the right to review the criminal record of the applicant. 46 USCS §7101 (h)

**Mold Remediator & Related Services:** An applicant must provide a set of electronic fingerprints, prove good moral character, and undergo a criminal history records. Disqualifying convictions include crimes directly related to the professional responsibilities of a mold remediator or mold assessor. This includes, but is not limited to: fraud, theft, burglary, bribery, arson, dealing in stolen property, forgery, uttering a forged instrument, sexual battery, lewd conduct, child or adult abuse, murder, manslaughter, assault, battery, and perjury. An applicant can also be disqualified based on a pattern of unlawful behavior. Fla. Admin. Code r. 61-31.101.

**Real Estate Appraisers:** An applicant for a license in real estate appraisal may be denied a license if he or she has been previously found guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction. An applicant may also be denied a license, or a licensee may have his or her license suspended or revoked, following a conviction for a crime involving moral turpitude or fraudulent or dishonest conduct regardless of adjudication. § 475.624.

**Talent Agencies:** The owner or operator of a talent agency must provide the Department of Business and Professional Regulation with a set of fingerprints and five affidavits of good character. Fla. Admin. Code r. 61-19.003

**Veterinary Medicine:** A veterinarian can be denied a license or have his or her license revoked upon conviction, regardless of adjudication, of any crime which directly relates to the practice of veterinary medicine or the ability to practice veterinary medicine. This includes any crime that

demonstrates a lack of regard for animal life (e.g., animal cruelty). It also includes any violation of state or federal drug laws. § 474.214(1)(c).

**Yacht or Ship Salesperson or Broker:** The application form includes fingerprint processing for a background check. Disqualifying convictions include any felony, any misdemeanor constituting a crime of moral turpitude, fraud, theft, dishonesty, assault and battery, or making a false statement. Fla. Admin. Code r. 61B-60.003.

### **Licenses Issued by the Department of Health**

In general, the licensing board for any entity under the supervision of the Florida Department of Health “shall refuse to admit a candidate to any examination” and shall refuse to issue a license to that candidate if he or she has been convicted of any violation of Chapter 409 (social and economic assistance programs), Chapter 817 (fraudulent business practices), or any drug offense, unless the candidate has successfully completed drug court. § 456.0635(2)(a), Fla. Stat. A guilty plea, including a no contest plea, and a withhold of adjudication count as a conviction for purposes of this statute.

However, a person with an otherwise disqualifying conviction can apply for a license if sufficient time has passed (15 years for a first or second degree felony; 10 year for third degree felonies; and 5 years for third degree felony convictions for possession of a controlled substance). § 456.0635(2)(a)(1)-(3), Fla. Stat.

**Acupuncture:** An acupuncturist can be denied a license or have his or her license suspended for any conviction, regardless of adjudication, related to the practice of acupuncture. The recommended penalty for a licensed acupuncturist is license suspension until rehabilitation is demonstrated. § 457.109; Fla. Admin. Code r. 64B1-9.001.

**Athletic Trainer:** A licensed athletic trainer can be disciplined for failing to report a conviction for any offense, or for being convicted of any crime related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B33-5.001.

**Chiropractor:** A person applying to be a licensed chiropractor must provide a set of fingerprints and undergo a criminal background check. § 460.406. A person can be denied a license or can have an existing license suspended or revoked upon conviction for any offense related to chiropractic medicine. § 460.413

**Clinical Laboratory Personnel:** Licensed lab personnel can be denied a license or disciplined for failing to report a conviction regardless of adjudication for any offense, or for being convicted of any crime involving Medicaid or healthcare fraud, related to the practice position, or involving moral turpitude. Fla. Admin. Code r. 64B3-12.001.

**Clinical Social Work, Marriage and Family Therapy & Mental Health Counseling:** A person can be denied a license or can have an existing license suspended or revoked for being

convicted, regardless of adjudication, or having entered a plea of no contest to, a crime in any jurisdiction that directly relates to the practice of the licensee's profession or the licensee's ability to practice that profession. §§ 456.072(1)(c) & 491.009(1)(c), F.S.) Fla. Admin. Code r. 64B4-5.001(1)(c).

**Dentistry (Dentists and Dental Hygienists):** A dentist or dental hygienist can be denied a license or have his or her license suspended or revoked if convicted, regardless of adjudication, of any crime which relates to the practice of dentistry or dental hygiene. A no contest plea creates a rebuttable presumption of guilt to the underlying criminal charges. § 466.028.

**Hearing Aid Specialist:** A hearing aid specialist can be denied a license or disciplined for failing to report a conviction for any offense, or for being convicted of any crime, related to Medicaid or healthcare fraud or violating any federal regulation regarding hearing aids. § 484.056; Fla. Admin. Code r. 64B6-7.002.

**Board of Medicine:** A person licensed to practice medicine can be denied a license or have his or her license suspended or revoked and disciplined, including fines, for failing to report a conviction for any offense, or being convicted of any crime, related to Medicaid or healthcare fraud, or a crime directly related to his or her practice or ability to practice. Fla. Admin Code. R. 64B8-8.001(2)(b) & (c) & (4).

**Medical Physicist:** A medical physicist can be denied a license or disciplined for failing to report a conviction for any offense, or for being convicted of any crime, related to Medicaid or healthcare fraud. The penalties will be greater if any fraud is found to have been intentional. Fla. Admin. Code r. 64B11-4.003.

**Nursing:** A nurse can be denied a license or have his or her license suspended or revoked and be disciplined, including fines, for failing to report, or for being convicted of any crime, regardless of adjudication, related directly to his or her practice or ability to practice. Fla. Admin. Code r. 64B9-8.006 (1) (c) & (hh).

**Nursing Home Administrator:** A nursing home administrator can be denied a license or disciplined for failing to report a conviction for any offense, or for being convicted of any crime, related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B10-14.004.

**Occupational Therapist:** An applicant for a license in occupational therapy must provide proof of good moral character. § 468.209. An occupational therapist can be denied a license or disciplined for failing to report a conviction for any offense, or for being convicted of any crime, related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B11-4.003.

**Optician:** A licensed optician can be disciplined for failing to report a conviction for any offense, or for being convicted of any crime, related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B12-8.020.

**Optometrist:** An applicant for a license in optometry must provide proof of good moral character. § 463.006. An applicant can be denied a license or disciplined by the Board if licensed following a conviction for any crime related to the practice of optometry. § 463.016.

**Orthotists and Prosthetists:** A person licensed to perform orthotic or prosthetic fittings can be disciplined for failing to report a conviction, or for being convicted of any crime, related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B14-7.003.

**Osteopathic Medicine:** A person licensed to practice Osteopathic medicine can be denied a license or have his or license suspended or revoked and be fined, for failing to report a conviction, or for being convicted of any crime, including pleas of no contest, related to his or her practice or ability to practice. Fla. Admin. Code r. 64B15-19.002 (3) & (53).

**Pharmacist:** A pharmacist can be denied a license or disciplined for failing to report a conviction for any offense, or for being convicted of any crime, involving Medicaid or healthcare fraud, related to the pharmacy practice, involving moral turpitude, or against state drug laws. § 465.016; Fla. Admin. Code r. 64B16-30.001.

**Physical Therapist:** An applicant for a license in physical therapy must provide proof of good moral character. § 486.031. A licensed physical therapist can be disciplined for failing to report to the Board any conviction, and for being convicted of any offense, related to Medicaid or healthcare fraud. § 486.125; Fla. Admin. Code r. 64B17-7.001.

**Podiatrist:** An applicant for a license in podiatric medicine with a conviction for an offense related to the practice of podiatric medicine will have his or her application denied. A licensed practitioner will be fined and have his or her license either put on probation, suspended, or revoked. Fla. Admin. Code r. 64B18-14.002.

**Psychologist:** A person seeking to become a licensed psychologist can be denied a license, or disciplined if already licensed, upon conviction for any offense relating to the practice of psychology. A no contest plea creates a rebuttable presumption of guilt of the underlying criminal charges. The person may present any evidence relevant to the underlying charges and circumstances surrounding the plea. § 490.009.

**Respiratory Therapist:** A respiratory therapist can be denied a license or disciplined for failing to report a conviction, or for being convicted of any crime, involving felony fraud, Medicare fraud, or any felony drug offense, whether state or federal. However, an applicant will not be denied a license if more than 15 years has elapsed between the end of probation following the conviction and the application. Fla. Admin. Code r. 64B32-5.001.

**Speech-Language Pathologist:** A licensed speech pathologist can be disciplined for failing to report a conviction, or for being convicted of any crime, related to Medicaid or healthcare fraud. Fla. Admin. Code r. 64B20-7.001

## Appendix B: Florida Jobs Requiring Background Checks

Numerous jobs in Florida require the applicant to pass a background check. See the Employment section for specific details about what the requirements for Level 1 and Level 2 background check entail.

Some of these jobs are with the state government. Others are in sensitive fields that are regulated by the state. This list is not exhaustive and does not include wholly private positions unregulated by the state. One should also keep in mind that a private employer is allowed to require a background check for any position.

**Athletic Coach:** An athletic coach who is authorized by any private, nongovernmental entity (excluding private schools) to coach any young athletic team must pass a Level 1 background check. § 943.0438, Fla. Stat. (2020).

**Cannabis Dispensing Organization:** Under the recently passed “Compassionate use of low-THC cannabis” law, the owner managers of any licensed dispensary under the law must submit to a Level 2 background check. § 381.986, Fla. Stat. (2020).

**Child Care Personnel:** All employees of a licensed childcare facility must provide proof of good moral character and undergo a Level 2 background check. § 402.305, Fla. Stat. (2020).

**Correctional Officer:** All employees must submit to a Level 2 background check, have no prior felony convictions, no prior convictions for any misdemeanors involving perjury or false statements, and must provide proof of good moral character. § 943.13, Fla. Stat. (2020).

**Department of Children and Families, and Department of Juvenile Justice:** All employees of these departments working in programs that service children or youths must undergo a Level 2 background check. § 984.01, Fla. Stat. (2020).

In addition, employees of the Department of Juvenile Justice face background check requirements that are greater than routine Level 2 requirements. In addition to the offenses that disqualify an applicant under a Level 2 background check, a DJJ employee cannot have been convicted, regardless of adjudication, of assault or battery against a law enforcement officer or criminal use of personal identification information. § 985.644, Fla. Stat. (2020).

**Direct Service Provider for the Elderly:** Any employee of a direct service provider with the Department of Elderly Affairs who provides face-to-face services for clients or has access to client funds, personal property, or living areas must satisfy a Level 2 background check. § 430.0402, Fla. Stat. (2020).

**Direct Service Provider for the Developmentally Disabled:** Any employee of a direct service provider with the Florida Agency for Persons with Disabilities who provides face-to-face services for a developmentally disabled client or has access to a client’s living areas or to a client’s funds

or personal property must pass a Level 2 background check. However, this requirement does not apply to a service provider who is related to his or her client. § 393.0655, Fla. Stat. (2020).

**Direct Service Provider for Children with Mental Illnesses:** Any employee of a direct service provider who provides care to children with mental illnesses under the Florida Self-Directed Care program must undergo a Level 2 background check. § 394.9084, Fla. Stat. (2020).

**Division of Blind Services:** All employees of the Florida Division of Blind Services must pass a Level 2 background check. § 413.011, Fla. Stat. (2020).

**Healthcare Providers:** Any person, seeking employment with the following healthcare providers, who gives personal care or services directly to clients or has access to client funds, personal property, or living areas, must pass a Level 2 background check:

- Abortion clinics;
- Adult day care centers.;
- Adult family-care homes;
- Ambulatory surgical centers;
- Assisted living facilities;
- Birth centers;
- Clinical laboratories;
- Companion services or homemaker services providers;
- Crisis stabilization units;
- Health care clinics;
- Health care risk managers;
- Health care services pools;
- Homes for special services;
- Home health agencies;
- Home medical equipment providers;
- Hospitals;
- Hospices;
- Intermediate care facilities for persons with developmental disabilities;
- Laboratories authorized to perform testing under the Drug-Free Workplace Act;
- Mobile surgical facilities;
- Multiphasic health testing centers;
- Nursing homes;
- Nurse registries;
- Organ, tissue, and eye procurement organizations. Prescribed pediatric extended care centers;
- Residential treatment centers for children and adolescents;
- Residential treatment facilities;
- Short-term residential treatment facilities; or

- Transitional living facilities. §§ 408.802, 809, Fla. Stat. (2020).

**Hurricane Mitigation Inspector:** A hurricane mitigation inspector who works for a wind certified entity in conjunction with the Department of Financial Services must undergo drug testing and a criminal background check. § 215.5586, Fla. Stat. (2020).

**Investigator for the Florida High School Athletic Association:** An investigator for the FHSAA must pass a Level 2 background check. § 1006.20, Fla. Stat. (2020).

**Law Enforcement Officer:** All law enforcement officers must submit to a Level 2 background check, have no prior felony convictions, no prior convictions for any misdemeanors involving perjury or false statements, and must provide proof of good moral character. § 943.13, Fla. Stat. (2020).

**Mental Health Personnel:** All mental health personnel with the Department of Children and Families and the Agency for Health Care Administration must undergo a Level 2 background check. Mental health providers include professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals admitted for mental health treatment. § 394.4572, Fla. Stat. (2020).

**Prekindergarten Instructor:** Any prekindergarten instructor employed by a public school or by a private prekindergarten provider must provide proof of good moral character and must pass a Level 2 background check. § 1002.55, 63, Fla. Stat. (2020).

**Private School Employee:** Any private school in Florida participating in the Florida Tax Credit Scholarship Program must require that all employees having direct contact with students pass a Level 2 background check. § 1002.421, Fla. Stat. (2020).

**Probation Officer:** Must submit to a Level 2 background check, have no prior felony convictions, no prior convictions for any misdemeanors involving perjury or false statements, and must provide proof of good moral character. § 943.13, Fla. Stat. (2020).

**School District Employee:** Any employee of a district school system or a university lab school must be of good moral character and, if serving in a position that requires direct contact with students, must pass a Level 2 background check. § 1012.32, Fla. Stat. (2020).

**School Healthcare Provider:** Any person who provides health services to students under a school health services plan must pass a Level 2 background check. § 381.0059, Fla. Stat. (2020).

**Substance Abuse Service Provider:** Any employee of a substance abuse service provider under the Department of Children and Families, who provides services to children or developmentally disabled adults must pass a Level 2 background check. § 397.451, Fla. Stat. (2020).

**Vocational Rehabilitation Service Provider:** All employees of any service provider who provides, through the Department of Education’s Division of Vocational Rehabilitation, employment services, independent living services, personal assistance services, vocational evaluation or tutorial services, or rehabilitation services to minors and vulnerable adults are subject to a Level 2 background check. § 413.208, Fla. Stat. (2020).

## Appendix C: Consolidated Collateral Consequences for Drug Related Convictions

As this manual has shown, there are numerous collateral consequences that specifically result from drug-related convictions. For the sake of convenience, the following is a consolidated summary of every collateral consequence described in the manual that is specifically related to drug convictions.

### Section: Benefits

- Disability: If a person has violated his or her state or federal parole or probation he or she is ineligible to receive Supplementary Security Income payments. Eligibility cannot be restored if the offense was drug-related.
- SNAP and TANF, Federal: A person convicted of a felony drug offense is ineligible for SNAP and TANF. It is up to individual states how extensively to enforce that ban. Florida has modified it so that a person is only ineligible for cash and food assistance benefits if he or she has been convicted of drug trafficking.
- Federal Commercial benefits: A person who has been convicted of drug trafficking will lose his or her federal commercial benefits for up to five years after a first conviction, up to 10 years for a second conviction, and permanently after a third or subsequent convictions. A person who has been convicted of possession of a controlled substance can lose their federal commercial benefits for up to one year. For a second or subsequent conviction, he or she will lose all federal commercial benefits for up to five years.

### Section: Driving Privileges

- A person who is convicted of possessing, selling, or trafficking a controlled substance, or convicted of conspiracy to commit these offenses, will have his or her driver's license suspended for six months.

### Section: Housing Issues

- Section 8 Public Housing Assistance:
  - Any household with a person who the public housing authorities have determined is illegally using a controlled substance can be denied housing assistance. Any household with a person whose pattern of illegal substance or alcohol abuse interferes with the safety or health of other residents may be denied housing assistance.
  - A person who has been evicted from federally funded assisted housing for a drug-related conviction is ineligible to apply for readmission into the program for three years, unless he or she completes a rehabilitation program.
  - Any household or individual who is currently or was recently engaged in drug-related criminal activity may be denied housing assistance.
  - A public housing lease may be terminated for any drug-related criminal activity committed by a tenant, a member of the tenant's household or a guest under the tenant's control. This includes manufacture, sale, distribution, use, or possession of a controlled substance with the intent to manufacture, sell, distribute, or use it.

- A public housing lease may be terminated for the illegal use of a controlled substance by a tenant or any member of the tenant’s household, as well as any pattern of drug use or alcohol abuse that threatens the health or safety of other tenants.
- Florida Urban Homesteading Act: A person will not qualify for this loan program if he or she or his or her spouse has been convicted of a drug-related offense within the last three years.

**Section: Employment**

- Background Screening: A person who has been found guilty, regardless of adjudication, of the following drug offenses will not pass a Level 1 or 2 security background check:
  - Any felony drug offense or misdemeanor drug offense if a person involved in the crime was a minor.
  - Fraudulent sale of a controlled substance, if a felony.
- State Employment and Professional Licenses: Any person convicted of trafficking or selling a controlled substance is disqualified for positions with any state agency or from obtaining any state issued professional license, unless the applicant has: completed his or her sentence including probation, is enrolled in a drug rehabilitation and treatment program, and submits to periodic drug tests.

**Section: Education**

- Federal Student Aid: A student who is convicted of any state or federal offense involving possession or sale of a controlled substance where the offense occurred during a period of enrollment for which the student was receiving federal aid, is ineligible to receive federal grants, loans, or work assistance from the date of conviction of possession for one year for the first offense, two years for the second offense, and indefinitely for the third offense. For sale of a controlled substance the student is ineligible for aid for two years for the first offense and indefinitely for the second offense. If the student completes a drug rehabilitation program or if the conviction is set aside or reversed eligibility may be restored.
- Stanley Tate Project Stars Scholarship Program: Any student who receives this scholarship and is convicted of a drug offense will lose the scholarship.

**Section: Family Issues**

- Placement of a Child: The Department of Children and Families will not place a child with a person, other than their parent, who has been convicted of a felony drug-related offense within the past five years.
- Termination of Parental Rights: The Department of Children and Families, a guardian ad litem, or any person with knowledge of the facts may move to terminate parental rights. One basis for termination is whether the person has an extensive history of alcohol or controlled substance abuse and has refused or failed to complete an available treatment over the last three years in making their determination.

**Section: Immigration**

- Admission: A conviction for any controlled substance violation can be grounds for the denial of admission to the United States. It is possible to receive a waiver if the only offense was possession of less than 30 grams of marijuana.
- Deportability: A conviction for any drug law, except possession of less than 30 grams of marijuana, can be grounds for deportation.

**Section: Firearms, Weapons, and Recreational Licenses**

- Concealed Weapons Permit: A person convicted of any drug offense in Florida or in any other state in the last three years is ineligible to receive a concealed weapons permit.

**Section: Civic and Civil Rights**

- Passport: Any person who has convicted a state or federal felony or misdemeanor drug offense and used a passport or crossed an international border is ineligible for a passport.

## **Appendix D: Collateral Consequence Guides from Other Jurisdictions**

This manual has focused on the collateral consequences for a conviction in Florida. Here are manual prepared by organizations in outside jurisdictions for further reference, all of which can be found online.

**California:** *Collateral Consequences*, prepared by the Los Angeles County Public Defender's Office, 2011.

**Colorado:** *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law*, prepared by the Colorado State Public Defenders, 2014.

**District of Columbia:** *Collateral Consequences of Criminal Records in the District of Columbia: A Guide for Criminal Defense Lawyers*, prepared by the Community Re-entry Program of the Public Defender Service for the District of Columbia, 2010.

**Kentucky:** *Collateral Consequences of Criminal Convictions in Kentucky*, prepared by the Kentucky Department of Public Advocacy, 2013.

**Louisiana:** *Now and Later: The Short and Long-Term Consequences of a Louisiana Conviction*, prepared by the Louisiana Justice Coalition, 2011.

**New York:** *The Consequences of Criminal Proceedings in New York State: A Guide for Criminal Defense Attorneys, Civil Legal Services Attorneys, and Other Reentry Advocates*, prepared by the Bronx Defenders, 2014.

**South Carolina:** *Collateral Consequences of Criminal Convictions: Dismantling Barriers to Opportunity*, prepared by the South Carolina Appleseed Legal Justice Center, 2012.

**Wisconsin:** *Civil Consequences of Conviction: The Impact of Criminal Records under Wisconsin Law*, prepared by the Wisconsin State Public Defenders, 2012.

**Washington:** *Beyond the Conviction*, prepared by the Washington Defender Association, 2013.

## Appendix E: For Felony Offenses In Florida– Consequences Of Plea Or Finding Of Guilt

1. When you were arrested, you were fingerprinted and photographed. That information was provided to the Florida Department of Law Enforcement (FDLE) and to the FBI.
2. Your arrest record is not private nor confidential.
3. Depending on the charge, the disposition of your case and your prior criminal history, you may or may not be able to seal your criminal record.
4. You will not be able to wipe clean or erase your arrest record with the FBI because the FBI does not seal or expunge arrest records.
5. A “credit time served” or “CTS” sentence does not mean that your case was dismissed or dropped. To the contrary, it means that you pled guilty or the judge found you guilty.
6. Because criminal history records are public, and many landlords obtain the criminal history records of potential renters, you may not be able to rent or lease a house or apartment.
7. Your arrest record does not disappear or go away just because the judge is withholding adjudication.
8. The judge may require you to give a sample of your DNA for a felony conviction or withhold.
9. You may not be able to live with or visit someone who lives in public or Section 8 housing.
10. You may have your license suspended if you are convicted of a drug charge.
11. You may not be able to serve in the military, depending on type and number of adjudications/convictions. You cannot serve in the military or become a law enforcement officer if adjudicated delinquent or found guilty of domestic violence (misdemeanor or felony).
12. If convicted, you will not be able to obtain State of Florida college financial aid (Bright Futures, Gold Seal Vocational & Academic Scholars).

13. You will not be able to obtain federal student financial aid (grant, loan, or work assistance), for a period of time, if you were convicted of possession or sale of a controlled substance while receiving the financial aid.
14. If convicted, you will not be able to petition to seal/expunge your criminal record.
15. If convicted, you will lose your right to vote, hold public office, be a juror, own or possess a firearm or carry a concealed weapon if you are 18 or older at the time of the conviction. In some cases, once you complete your sentence, some of these rights will be given back to you (restored).
16. You will not be eligible for food stamps if convicted of trafficking drugs.
17. You could face a mandatory prison sentence on future felony charges or a longer jail sentence on misdemeanor or felony charges. A prior felony conviction, including adjudications as a juvenile, may subject you to a longer prison term or a mandatory sentence.
18. You may not be able to obtain employment with:
  - the state or municipality if you were convicted of drug trafficking or convicted of any felony or 1st degree misdemeanor “directly related” to the job;
  - a county or municipality (if the job is critical to security or public safety);
  - law enforcement, correctional or other agency that works with children or elderly;
  - the public school system, a seaport or airport.
19. Your felony conviction may be used against you if you testify, to undermine your credibility.
20. Your photograph may be posted on the Florida Department of Corrections website, if you are sentenced to probation or state prison.
21. You will have your occupational license revoked if convicted of selling drugs.
22. If you have a conviction or withhold for misdemeanor or felony, you may be denied an occupational or business license, e.g., in healthcare profession including certified nurse assistant, licensed practical nurse, EMT and paramedics, registered nurse.

23. If you are not a United States citizen and do not have a green card (as permanent resident), a conviction or withhold of adjudication may prevent you from ever getting a green card. You could be deported, even if you have a green card.
24. If you are undocumented, it does not matter whether you plea guilty or not, you could be removed from the U.S.
25. With few exceptions, you will have to register as a sex offender or sexual predator if convicted of a sex offense. You will not be able to live anywhere you want. Your photograph, name and address will be posted in the Florida Department of Law Enforcement (FDLE) website.
26. If your arrest, conviction or withhold of adjudication is for a sex-related or sexually motivated charge, it can be used against you in the future to keep you locked up for a long time even after you have finished your sentence.

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- <sup>1</sup> *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010).
- <sup>2</sup> ABA Standards for Criminal Justice 4–5.4 (4th ed. 2015) (“The Defense Function”).
- <sup>3</sup> § 948.01(2), Fla. Stat. (2020).
- <sup>4</sup> *See, e.g., Brown v. State*, 787 So. 2d 136 (Fla. 4th DCA 2001).
- <sup>5</sup> *Snyder v. State*, 673 So. 2d 9 (Fla. 1996).
- <sup>6</sup> § 775.08435(1), Fla. Stat. (2020).
- <sup>7</sup> § 316.656(1), Fla. Stat. (2020).
- <sup>8</sup> § 943.059, Fla. Stat. (2020).
- <sup>9</sup> § 943.0585, Fla. Stat. (2020).
- <sup>10</sup> *See, e.g., State v. Heath*, 279 P.3d 458 (Wash. Ct. App. 2012) (treating withholding of adjudication as a conviction for purposes of Washington law); *Kasckarow v. Board of Examiners of Sex Offenders of State*, 936 N.Y.S.2d 498 (N.Y. Sup. Ct. 2011) (withhold a conviction for purposes of New York sex offender registration law).
- <sup>11</sup> *See, e.g., United States v. Orellanes*, 809 F.2d 1526 (11th Cir. 1987).
- <sup>12</sup> *State v. Jones*, 47 So. 3d 1096 (Ct. App. Louis. 2010) (finding a withhold to a felony in Florida did not render defendant a felon for Louisiana’s felon in possession of a firearm statute).
- <sup>13</sup> §§ 943.0585(2)(a)(d), 943.059(1)(b)(1), Fla. Stat. (2020).
- <sup>14</sup> §§ 943.0584, 943.0585, 943.059, Fla. Stat. (2020).
- <sup>15</sup> § 943.0585(2)(a)2., Fla. Stat. (2020).
- <sup>16</sup> § 943.0595(2), Fla. Stat. (2020).
- <sup>17</sup> § 943.0581(2), Fla. Stat. (2020).
- <sup>18</sup> § 943.0585(4), Fla. Stat. (2020).
- <sup>19</sup> § 943.059(4), Fla. Stat. (2020).
- <sup>20</sup> § 943.0585(4), Fla. Stat. (2020); § 943.059(4), Fla. Stat. (2020).
- <sup>21</sup> § 943.0585(1), § 943.059, Fla. Stat. (2020).
- <sup>22</sup> § 943.0585(5), Fla. Stat. (2020).
- <sup>23</sup> § 943.0586, Fla. Stat. (2020).
- <sup>24</sup> § 943.0586, Fla. Stat. (2020).
- <sup>25</sup> Fla. Const. art. IV, §8.
- <sup>26</sup> Fla. R. Exe. Cle. 4.
- <sup>27</sup> Fla. R. Exe. Cle. 4A.
- <sup>28</sup> § 943.0435(11), Fla. Stat. (2020).
- <sup>29</sup> Fla. R. Exe. Cle. 4B.
- <sup>30</sup> Fla. R. Exe. Cle. 4G.
- <sup>31</sup> Fla. R. Exe. Cle. 4F.
- <sup>32</sup> Fla. R. Exe. Cle. 9.
- <sup>33</sup> Fla. R. Exe. Cle. 10.
- <sup>34</sup> Fla. R. Exe. Cle. 6A-B.
- <sup>35</sup> Fla. R. Exe. Cle. 10.
- <sup>36</sup> Fla. R. Exe. Cle. 12B.
- <sup>37</sup> Fla. R. Exe. Cle. 12C.
- <sup>38</sup> Fla. R. Exe. Cle. 14.
- <sup>39</sup> *Hand v. Scott*, 315 F.Supp.3d 1244 (N.D. Fla. 2018).
- <sup>40</sup> *Hand v. Desantis*, 946 F.3d 1272 (11th Cir. 2020).
- <sup>41</sup> 42 U.S.C. § 402(x).
- <sup>42</sup> 42 U.S.C. § 1382(e)(4)(A).
- <sup>43</sup> 42 U.S.C. § 1382(e)(4)(B).
- <sup>44</sup> 42 U.S.C. § 1382(e)(4)(C).
- <sup>45</sup> 20 C.F.R. § 404.1506
- <sup>46</sup> 42 U.S.C. § 1383(a)(2).

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- <sup>47</sup> 7 U.S.C. § 2015(k); 42 U.S.C. § 608(a)(9).  
<sup>48</sup> 7 U.S.C. § 2015(r).  
<sup>49</sup> 21 U.S.C.A. § 862a.  
<sup>50</sup> 21 U.S.C.A. § 862a.  
<sup>51</sup> § 414.095(1), Fla. Stat. (2020).  
<sup>52</sup> [http://sentencingproject.org/doc/publications/cc\\_A%20Lifetime%20of%20Punishment.pdf](http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf)  
<sup>53</sup> 42 U.S.C.A. § 1320a-7b.  
<sup>54</sup> § 409.913(33), Fla. Stat. (2020).  
<sup>55</sup> 38 U.S.C. § 1505(a).  
<sup>56</sup> 38 U.S.C. § 1505(b).  
<sup>57</sup> 38 U.S.C. §§ 6104-05.  
<sup>58</sup> 21 U.S.C.A. § 862(d) (2020).  
<sup>59</sup> 21 U.S.C.A. § 862(a) (2020).  
<sup>60</sup> 21 U.S.C.A. § 862(b) (2020).  
<sup>61</sup> 21 U.S.C.A. § 862(c) (2020).  
<sup>62</sup> 11 USC §1328 & 11 USCS § 707.  
<sup>63</sup> § 443.091, Fla. Stat. (2020).  
<sup>64</sup> § 443.101(12), Fla. Stat. (2020).  
<sup>65</sup> § 443.101(9)(a), Fla. Stat. (2020).  
<sup>66</sup> § 443.101(6), Fla. Stat. (2020).  
<sup>67</sup> § 443.101(13), Fla. Stat. (2020).  
<sup>68</sup> § 440.09(4)(a), Fla. Stat. (2020).  
<sup>69</sup> § 112.3173, Fla. Stat. (2020).  
<sup>70</sup> § 28.246(6), Fla. Stat. (2020).  
<sup>71</sup> § 322.28(2)(a)(1), Fla. Stat. (2020).  
<sup>72</sup> § 322.28(2)(a)(2), Fla. Stat. (2020).  
<sup>73</sup> § 322.28(2)(a)(3), Fla. Stat. (2020).  
<sup>74</sup> § 322.28(2)(b), Fla. Stat. (2020).  
<sup>75</sup> § 322.28(2)(d), Fla. Stat. (2020).  
<sup>76</sup> § 322.28(2)(d), Fla. Stat. (2020).  
<sup>77</sup> § 322.0261, Fla. Stat. (2020).  
<sup>78</sup> § 316.656(1), Fla. Stat. (2020).  
<sup>79</sup> § 316.1937(6)(a)-(d), Fla. Stat. (2020).  
<sup>80</sup> § 316.1937(5)(a), Fla. Stat. (2020).  
<sup>81</sup> § 322.27(5)(a), Fla. Stat. (2020).  
<sup>82</sup> § 322.264(1), Fla. Stat. (2020).  
<sup>83</sup> § 322.264(2), Fla. Stat. (2020).  
<sup>84</sup> § 322.28(3), Fla. Stat. (2020).  
<sup>85</sup> § 322.28(4)(a)-(b), Fla. Stat. (2020).  
<sup>86</sup> § 322.27(1)(b), Fla. Stat. (2020).  
<sup>87</sup> § 322.28(1), Fla. Stat. (2020).  
<sup>88</sup> § 322.0261, Fla. Stat. (2020).  
<sup>89</sup> § 322.055(1), Fla. Stat. (2020).  
<sup>90</sup> *Id.*  
<sup>91</sup> *Huesca v. State*, 841 So. 2d 585 (Fla. 2d DCA 2008).  
<sup>92</sup> *Lee v. State*, 673 So. 2d 990 (Fla. 4th DCA 1996).  
<sup>93</sup> 23 U.S.C.A. § 159(a)-(b) (2020).  
<sup>94</sup> *Id.*  
<sup>95</sup> § 322.27(6), Fla. Stat. (2020).  
<sup>96</sup> *Id.*  
<sup>97</sup> § 316.191(3)(a)-(c), Fla. Stat. (2020).

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- <sup>98</sup> § 322.27(2), Fla. Stat. (2020).
- <sup>99</sup> § 320.02(6), Fla. Stat. (2020).
- <sup>100</sup> § 322.26(3), Fla. Stat. (2020).
- <sup>101</sup> § 322.26(5), Fla. Stat. (2020).
- <sup>102</sup> § 322.26(6), Fla. Stat. (2020).
- <sup>103</sup> § 322.26(7), Fla. Stat. (2020).
- <sup>104</sup> § 322.26(9), Fla. Stat. (2020).
- <sup>105</sup> § 322.28(6), Fla. Stat. (2020).
- <sup>106</sup> § 322.28(7), Fla. Stat. (2020).
- <sup>107</sup> § 322.274(1), Fla. Stat. (2020).
- <sup>108</sup> §§ 318.18, 322.245(5)(a), Fla. Stat. (2020).
- <sup>109</sup> § 322.245(2), Fla. Stat. (2020).
- <sup>110</sup> 42 U.S.C.A. § 666(a)(16) (2020).
- <sup>111</sup> § 61.13016(1), Fla. Stat. (2020).
- <sup>112</sup> § 322.23(2), Fla. Stat. (2020).
- <sup>113</sup> § 322.24, Fla. Stat. (2020).
- <sup>114</sup> § 322.271(1)(c), Fla. Stat. (2020).
- <sup>115</sup> § 322.271(1)(b), Fla. Stat. (2020).
- <sup>116</sup> § 322.271(2), Fla. Stat. (2020).
- <sup>117</sup> § 322.271(4)-(7), Fla. Stat. (2020).
- <sup>118</sup> 42 U.S.C.A. § 13663(a) (2020).
- <sup>119</sup> 42 U.S.C.A. §1437n(f)(1); (only applies to public housing, the Section 8 voucher program, and the Section 8 Moderate Rehabilitation program)
- <sup>120</sup> 42 U.S.C.A. § 13661(a) (2020)
- <sup>121</sup> 42 U.S.C.A. § 1437a(b)(9); 24 C.F.R. 5.100 (2017) “Drug-related criminal activity” is defined as the illegal manufacture, sale, distribution, or use of a drug or the possession of a drug with intent to manufacture, sell, distribute, or use the drug. “Drug” is defined as a controlled substance as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. § 802.
- <sup>122</sup> 24 C.F.R. §5.100 (2020); “Violent criminal activity” is defined as “any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause or be reasonably likely to cause, serious bodily injury or property damage.”
- <sup>123</sup> 42 U.S.C. § 1437d(l); 24 C.F.R. §966.4(f)(12)(i).
- <sup>124</sup> 24 C.F.R. §966.4(l)(5)(i)(A).
- <sup>125</sup> 24 C.F.R. §966.4(l)(3)(B)(3); 24 C.F.R. §966.4(l)(5)(ii)(B).
- <sup>126</sup> HUD Multifamily Lease, Form HUD-90105a, ¶23.
- <sup>127</sup> *Id.*
- <sup>128</sup> 24 C.F.R. §982.551(l)
- <sup>129</sup> 24 C.F.R. §982.553(b)(1)(ii)
- <sup>130</sup> § 420.630, Fla. Stat. (2020).
- <sup>131</sup> § 420.635, Fla. Stat. (2020).
- <sup>132</sup> § 420.633, Fla. Stat. (2020).
- <sup>133</sup> § 420.635, Fla. Stat. (2020).
- <sup>134</sup> Fla. Admin. Code r. 58A-14.008.
- <sup>135</sup> § 723.061(1)(b), Fla. Stat. (2020).
- <sup>136</sup> § 760.23, Fla. Stat. (2020).
- <sup>137</sup> § 760.29(5)(d), Fla. Stat. (2020).
- <sup>138</sup> See Federal Executive Order 10450 – Security Requirements for Government Employment, available at: <http://archives.gov/federalregister/codification/executive-order/10450.html>.
- <sup>139</sup> 10 U.S.C. § 504.
- <sup>140</sup> *Id.* Similarly, a person is relieved from service under the Selective Service Act if he has been convicted of a crime punishable by more than one year (i.e., a felony). 50 U.S.C. App. § 456(m).

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- <sup>141</sup> Department of Defense Instruction No. 1304.26, September 20, 2011, available at <http://www.dtic.mil/whs/directives/corres/pdf/130426p.pdf>.
- <sup>142</sup> *Id.* at E2.2.7.
- <sup>143</sup> *Id.* at E2.2.7.1
- <sup>144</sup> *Id.* at E2.2.7.2.
- <sup>145</sup> *Id.* at E2.2.7.2.1
- <sup>146</sup> *Id.* at E2.2.7.2.2
- <sup>147</sup> 18 U.S.C. § 922(d)(9).
- <sup>148</sup> Department of Defense Instruction No. 6400.06, 6.1.4.5.1.5, September 20, 2011, available at <http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf>.
- <sup>149</sup> § 1012.467, Fla. Stat. (2020).
- <sup>150</sup> U.S. Equal Employment Opportunity Commission Enforcement Guidelines, *Consideration of Arrest and Conviction Records in Employment Decisions*, April 25, 2012 available at [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)  
Under Title VII of the Civil Rights Act of 1964
- <sup>151</sup> § 112.011(2)(b), Fla. Stat. (2020).
- <sup>152</sup> § 112.011(1)(a), Fla. Stat. (2020).
- <sup>153</sup> § 112.011(2)(a), (c), Fla. Stat. (2020).
- <sup>154</sup> §§ 435.03-04, Fla. Stat. (2020).
- <sup>155</sup> § 435.04, Fla. Stat. (2020).
- <sup>156</sup> § 110.1127, Fla. Stat. (2020).
- <sup>157</sup> § 435.07(1), Fla. Stat. (2020).
- <sup>158</sup> § 435.07(3), Fla. Stat. (2020).
- <sup>159</sup> § 435.07(4)(b), Fla. Stat. (2020).
- <sup>160</sup> Fla. Admin. Code r. 33-601.715(3).
- <sup>161</sup> DOC Form DC6-111A, available at <https://www.flrules.org/gateway/reference.asp?No=Ref-04767>.
- <sup>162</sup> Fla. Admin. Code r. 33-601.713(10).
- <sup>163</sup> Fla. Admin. Code r. 33-601.717(5)(c).
- <sup>164</sup> Fla. Admin. Code r. 33-601.717(5)(c)(5).
- <sup>165</sup> § 775.16(1)-(2), Fla. Stat. (2020).
- <sup>166</sup> Rule 1-14.1 of the Rules of the Supreme Court Relating to Admissions to the Bar (Bar Admissions Rules)
- <sup>167</sup> Bar Admission Rule 2-12.
- <sup>168</sup> Bar Admission Rule 2-13.3.
- <sup>169</sup> Bar Admission Rule 2-13.4
- <sup>170</sup> Bar Admission Rule 3-10.1(c)(4).
- <sup>171</sup> Bar Admission Rule 3-10.1(c)(5).
- <sup>172</sup> Bar Admission Rule 3-11(a).
- <sup>173</sup> Bar Admission Rule 3-12.
- <sup>174</sup> Bar Admission Rules 3-12-13.
- <sup>175</sup> Bar Admission Rule 2-14.
- <sup>176</sup> § 744.1012, Fla. Stat. (2020).
- <sup>177</sup> § 744.3135, Fla. Stat. (2020).
- <sup>178</sup> § 744.309, Fla. Stat. (2020).
- <sup>179</sup> § 744.474, Fla. Stat. (2020).
- <sup>180</sup> § 39.820, Fla. Stat. (2020).
- <sup>181</sup> § 39.821, Fla. Stat. (2020).
- <sup>182</sup> § 320.3206, Fla. Stat. (2020).
- <sup>183</sup> 20 U.S.C. § 1091(r)(1).
- <sup>184</sup> 20 U.S.C. § 1091(r)(2).
- <sup>185</sup> 20 U.S.C. § 1070a(b)(6).
- <sup>186</sup> § 1009.531(1)(e), Fla. Stat. (2020).

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- <sup>187</sup> § 1009.02, Fla. Stat. (2020).  
<sup>188</sup> § 1009.984(3), Fla. Stat. (2020).  
<sup>189</sup> § 1006.07(1)(b), Fla. Stat. (2020).  
<sup>190</sup> § 1006.08(2), Fla. Stat. (2020).  
<sup>191</sup> § 1003.31(3), Fla. Stat. (2020).  
<sup>192</sup> § 1003.31(3), Fla. Stat. (2020).  
<sup>193</sup> § 1006.15(3)(a)(4), Fla. Stat. (2020).  
<sup>194</sup> § 1006.62, Fla. Stat. (2020).  
<sup>195</sup> § 1006.62(3)(a), Fla. Stat. (2020).  
<sup>196</sup> § 39.0138(1), Fla. Stat. (2020).  
<sup>197</sup> § 39.0138(2), Fla. Stat. (2020).  
<sup>198</sup> § 39.0138(3), Fla. Stat. (2020).  
<sup>199</sup> § 39.0138(6), Fla. Stat. (2020); Fla. Admin. Code r. 65C-28.011.  
<sup>200</sup> § 39.0138(7), Fla. Stat. (2020).  
<sup>201</sup> *Id.*  
<sup>202</sup> § 39.802(1), Fla. Stat. (2020).  
<sup>203</sup> § 39.802(1), Fla. Stat. (2020).  
<sup>204</sup> § 39.8055(1)(c), Fla. Stat. (2020).  
<sup>205</sup> § 39.806(1)(d)(1), Fla. Stat. (2020).  
<sup>206</sup> § 39.806(1)(d)(2), Fla. Stat. (2020).  
<sup>207</sup> § 39.806(1)(d)(2), Fla. Stat. (2020).  
<sup>208</sup> § 39.806(1)(d)(3), Fla. Stat. (2020).  
<sup>209</sup> § 39.806(1)(d)(3)(d), Fla. Stat. (2020).  
<sup>210</sup> § 39.806(1)(g), Fla. Stat. (2020).  
<sup>211</sup> § 39.806(1)(n), Fla. Stat. (2020).  
<sup>212</sup> § 39.806(1)(h), Fla. Stat. (2020).  
<sup>213</sup> § 39.806(1)(j), Fla. Stat. (2020).  
<sup>214</sup> § 63.089, Fla. Stat. (2020).  
<sup>215</sup> § 63.089(3)(e), Fla. Stat. (2020).  
<sup>216</sup> § 63.089(4)(b), Fla. Stat. (2020).  
<sup>217</sup> § 39.0139(2), Fla. Stat. (2020).  
<sup>218</sup> § 39.0139(3), Fla. Stat. (2020).  
<sup>219</sup> § 39.0139(4), Fla. Stat. (2020).  
<sup>220</sup> § 39.509, Fla. Stat. (2020).  
<sup>221</sup> § 39.509(6), Fla. Stat. (2020).  
<sup>222</sup> § 61.13(c), Fla. Stat. (2020).  
<sup>223</sup> § 61.13(c)(2), Fla. Stat. (2020).  
<sup>224</sup> *Id.*  
<sup>225</sup> § 61.45(1)(e), Fla. Stat. (2020).  
<sup>226</sup> § 61.45(4)(e), Fla. Stat. (2020).  
<sup>227</sup> § 61.45(4)(f), Fla. Stat. (2020).  
<sup>228</sup> § 63.092(1), Fla. Stat. (2020).  
<sup>229</sup> § 63.092(3), Fla. Stat. (2020).  
<sup>230</sup> § 63.092(3)(b), Fla. Stat. (2020).  
<sup>231</sup> § 63.092(3), Fla. Stat. (2020).  
<sup>232</sup> § 741.30, Fla. Stat. (2020).  
<sup>233</sup> *Id.*  
<sup>234</sup> § 741.30(6)(e), Fla. Stat. (2020).  
<sup>235</sup> § 985.04(1)(a), Fla. Stat. (2020).  
<sup>236</sup> § 985.04(2)(a), Fla. Stat. (2020).  
<sup>237</sup> *See N.J.G. v. State*, 987 So. 2nd 101 (Fla. 5th DCA 2008); § 316.635, Fla. Stat. (2020).

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- 238 § 943.0515, Fla. Stat. (2020).  
239 *Id.*  
240 *Id.*  
241 § 943.0515(2)(a), Fla. Stat. (2020).  
242 § 985.12, Fla. Stat. (2020).  
243 § 985.557(1), Fla. Stat. (2020).  
244 § 958.04(1), Fla. Stat. (2020).  
245 Fla. Stat. § 958.04(2) (2020).  
246 Fla. Stat. § 921.0026(2)(1) (2020).  
247 *See State v. Blackburn*, 965 So. 2d 231 (Fla. 4th DCA 2007).  
248 *Goelz v. State*, 937 So. 2d 1237 (Fla. 4th DCA 2006)  
249 § 958.14, Fla. Stat. (2020).  
250 § 1006.13(1), Fla. Stat. (2020).  
251 § 1006.13(3), Fla. Stat. (2020).  
252 § 1006.13(5), Fla. Stat. (2020).  
253 § 1006.13(6), Fla. Stat. (2020).  
254 § 985.04(4)(a), Fla. Stat. (2020).  
255 § 985.04(4)(b), Fla. Stat. (2020).  
256 *See N.J.G. v. State*, 987 So. 2d 101 (Fla. 5th DCA 2008).  
257 § 790.22(5)(a), Fla. Stat. (2020).  
258 § 790.22(5)(b), Fla. Stat. (2020).  
259 § 812.0155, Fla. Stat. (2020).  
260 § 322.056, Fla. Stat. (2020).  
261 § 790.22(6), Fla. Stat. (2020).  
262 § 790.169, Fla. Stat. (2020).  
263 § 790.23(1)(b), Fla. Stat. (2020).  
264 § 943.0435(1), Fla. Stat. (2020).  
265 § 985.475(1), Fla. Stat. (2020).  
266 § 985.441(1)(c), Fla. Stat. (2020).  
267 § 985.475(2), Fla. Stat. (2020).  
268 § 985.04(4)(d), Fla. Stat. (2020).  
269 § 985.48(6), Fla. Stat. (2020).  
270 § 985.481(2), Fla. Stat. (2020).  
271 *Padilla v. Kentucky*, 559 U.S. 356 (2010).  
272 *See, e.g., Chong v. INS*, 890 F.2d 284, 284–85 (11th Cir.1989).  
273 8 U.S.C.A. § 1182  
274 8 U.S.C. §§ 1101, 1227.  
275 § 932.703(1)(a), Fla. Stat. (2020).  
276 § 932.704(2), Fla. Stat. (2020).  
277 § 932.701(2)(a), Fla. Stat. (2020).  
278 § 932.702, Fla. Stat. (2020).  
279 § 932.703(4), Fla. Stat. (2020).  
280 § 932.703(1)(a), Fla. Stat. (2020).  
281 § 932.703(1)(c)-(d), Fla. Stat. (2020).  
282 § 932.703(6)(a), Fla. Stat. (2020).  
283 § 932.703(2)(a), Fla. Stat. (2020).  
284 § 932.701(2)(f), Fla. Stat. (2020).  
285 § 932.704(11)(b), Fla. Stat. (2020).  
286 § 932.703(2)(b), Fla. Stat. (2020).  
287 § 932.703(6)(c), Fla. Stat. (2020).  
288 § 932.704(8), Fla. Stat. (2020).

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<sup>289</sup> § 932.704(9), Fla. Stat. (2020).  
<sup>290</sup> § 790.08(1), Fla. Stat. (2020).  
<sup>291</sup> § 790.08(2), Fla. Stat. (2020).  
<sup>292</sup> § 790.08(3), Fla. Stat. (2020).  
<sup>293</sup> § 849.12, Fla. Stat. (2020).  
<sup>294</sup> § 895.03, Fla. Stat. (2020).  
<sup>295</sup> § 895.05(1)(b), Fla. Stat. (2020).  
<sup>296</sup> § 895.05(2)(a), Fla. Stat. (2020).  
<sup>297</sup> § 379.341, Fla. Stat. (2020).  
<sup>298</sup> § 379.337, Fla. Stat. (2020).  
<sup>299</sup> § 568.10, Fla. Stat. (2020).  
<sup>300</sup> Fla. Const. Art. I, § 14.  
<sup>301</sup> Rule 3.131(b)(3)  
<sup>302</sup> § 907.041(4)(c)(5), Fla. Stat. (2020).  
<sup>303</sup> § 907.041(4)(c)(4), Fla. Stat. (2020).  
<sup>304</sup> § 907.041(4)(c)(6), Fla. Stat. (2020).  
<sup>305</sup> § 948.08(2), Fla. Stat. (2020).  
<sup>306</sup> § 948.08(7)(c), Fla. Stat. (2020).  
<sup>307</sup> § 948.08(2), Fla. Stat. (2020).  
<sup>308</sup> § 948.08(6)(a), Fla. Stat. (2020).  
<sup>309</sup> § 910.035(5), Fla. Stat. (2020).  
<sup>310</sup> *Lafler v. Cooper*, --- U.S. ---, 132 S.Ct. 1376, 1381 (2012).  
<sup>311</sup> § 960.001(1)(g), Fla. Stat. (2020).  
<sup>312</sup> § 90.610, Fla. Stat. (2020). The rules of evidence in the federal system and in most other states similarly allow for impeachment by prior convictions.  
<sup>313</sup> § 784.03, Fla. Stat. (2020).  
<sup>314</sup> § 812.014(3)(b), Fla. Stat. (2020).  
<sup>315</sup> § 316.193(2)(b)(3), Fla. Stat. (2020).  
<sup>316</sup> § 322.34(2)(c), Fla. Stat. (2020).  
<sup>317</sup> § 414.39(2)(c), Fla. Stat. (2020).  
<sup>318</sup> § 741.31, Fla. Stat. (2020).  
<sup>319</sup> § 836.12, Fla. Stat. (2020).  
<sup>320</sup> § 796.07, Fla. Stat. (2020).  
<sup>321</sup> § 784.049, Fla. Stat. (2020).  
<sup>322</sup> § 825.1036(4)(b), Fla. Stat. (2020).  
<sup>323</sup> § 775.084(1)(a), Fla. Stat. (2020).  
<sup>324</sup> § 775.084(1)(b), Fla. Stat. (2020).  
<sup>325</sup> § 775.084(1)(c), Fla. Stat. (2020).  
<sup>326</sup> § 775.084(1)(d), Fla. Stat. (2020).  
<sup>327</sup> § 775.082(9)(a), Fla. Stat. (2020).  
<sup>328</sup> § 921.0024, Fla. Stat. (2017).  
<sup>329</sup> *Montgomery v. State*, 897 So. 2d 1282 (Fla. 2005).  
<sup>330</sup> Fla. R. Crim. P. Rule 3.691(a).  
<sup>331</sup> *Cox v. State*, 416 So. 2d 511 (Fla. 5th DCA 1982).  
<sup>332</sup> § 775.13, Fla. Stat. (2020).  
<sup>333</sup> § 775.13(3)(c), Fla. Stat. (2020).  
<sup>334</sup> 18 U.S.C. § 922(g).  
<sup>335</sup> § 70.23, Fla. Stat. (2020).  
<sup>336</sup> § 790.065(1)-(2), Fla. Stat. (2020).  
<sup>337</sup> § 70.235, Fla. Stat. (2020).  
<sup>338</sup> § 112.011(1)(c), Fla. Stat. (2020).

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<sup>339</sup> § 790.01(1)-(3), Fla. Stat. (2020).  
<sup>340</sup> § 790.06(1), Fla. Stat. (2020).  
<sup>341</sup> § 790.06(2)(d), Fla. Stat. (2020).  
<sup>342</sup> § 790.06(2)(e), Fla. Stat. (2020).  
<sup>343</sup> § 790.06(2)(f), Fla. Stat. (2020).  
<sup>344</sup> § 790.06(2)(k), Fla. Stat. (2020).  
<sup>345</sup> § 790.06(10), Fla. Stat. (2020).  
<sup>346</sup> § 790.401, Fla. Stat. (2020).  
<sup>347</sup> § 775.0846, Fla. Stat. (2020).  
<sup>348</sup> § 327.731, Fla. Stat. (2020).  
<sup>349</sup> § 379.3503, Fla. Stat. (2020).  
<sup>350</sup> Fla. Const. Art. VI, § 4(a).  
<sup>351</sup> Fla. Const. Art. VI, § 4(a).  
<sup>352</sup> § 98.0751(2)(a), Fla. Stat. (2020).  
<sup>353</sup> *Jones v. Desantis*, 2020 WL 2618062 (N.D. Fla. 2020).  
<sup>354</sup> Fla. Const. Art. VI, § 4(a).  
<sup>355</sup> 28 U.S.C. § 1865(b)(5).  
<sup>356</sup> § 40.013, Fla. Stat. (2020); *see also* Fla. R. Civ. P. Form 1.983.  
<sup>357</sup> Fla. R. Crim. P. Form 3.9855.  
<sup>358</sup> 22 U.S.C. § 2714.  
<sup>359</sup> § 68.07, Fla. Stat. (2020).  
<sup>360</sup> § 943.325(1), Fla. Stat. (2020).  
<sup>361</sup> § 943.325(7), Fla. Stat. (2020).  
<sup>362</sup> § 943.325(2), Fla. Stat. (2020).  
<sup>363</sup> § 943.325(12), Fla. Stat. (2020).  
<sup>364</sup> § 943.325(8), Fla. Stat. (2020).  
<sup>365</sup> § 943.325(15), Fla. Stat. (2020).  
<sup>366</sup> § 943.325(16), Fla. Stat. (2020).  
<sup>367</sup> FDLE Rule 11D-6.003(2).  
<sup>368</sup> § 775.0877(1)(a)-(o), Fla. Stat. (2020).  
<sup>369</sup> § 960.003, Fla. Stat. (2020).  
<sup>370</sup> § 945.355, Fla. Stat. (2020).  
<sup>371</sup> § 943.0435, Fla. Stat. (2020).  
<sup>372</sup> § 943.0435(2)(a), Fla. Stat. (2020).  
<sup>373</sup> § 943.0435(2)(b), Fla. Stat. (2020).  
<sup>374</sup> Fla. Admin. Code r. 11D-6.003  
<sup>375</sup> § 943.0435(2)(a), Fla. Stat. (2020).  
<sup>376</sup> § 943.0435(9), Fla. Stat. (2020).  
<sup>377</sup> § 944.606(3)(b)-(d), Fla. Stat. (2020).  
<sup>378</sup> § 943.0435(9)(b), Fla. Stat. (2020).  
<sup>379</sup> § 943.0435(3), Fla. Stat. (2020).  
<sup>380</sup> § 322.141(3), Fla. Stat. (2020).  
<sup>381</sup> § 322.141(4), Fla. Stat. (2020).  
<sup>382</sup> § 68.07, Fla. Stat. (2020).  
<sup>383</sup> § 322.141(7), Fla. Stat. (2020).  
<sup>384</sup> § 775.215, Fla. Stat. (2020).  
<sup>385</sup> § 943.0435(4)(b), Fla. Stat. (2020).  
<sup>386</sup> § 943.0435(4)(b)(2), Fla. Stat. (2020).  
<sup>387</sup> Art. XVII Miami-Dade Code of Ordinances, The Lauren Book Child Safety Ordinance, Section 21-277.  
<sup>388</sup> Miami-Dade Code of Ordinances, Section 21-284.  
<sup>389</sup> § 435.07(4)(b), Fla. Stat. (2020).

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<sup>390</sup> § 943.04351, Fla. Stat. (2020).  
<sup>391</sup> § 943.0435(2)(b), Fla. Stat. (2020).  
<sup>392</sup> § 943.0435(2)(b)(2), Fla. Stat. (2020).  
<sup>393</sup> § 943.0435(11), Fla. Stat. (2020).  
<sup>394</sup> § 943.04354(11), Fla. Stat. (2020).  
<sup>395</sup> § 943.0435(11)(a), Fla. Stat. (2020).  
<sup>396</sup> § 775.21(4)(a)(1)(a), Fla. Stat. (2020).  
<sup>397</sup> § 775.21(4)(a)(1)(b), Fla. Stat. (2020).  
<sup>398</sup> § 775.21(6)-(7), Fla. Stat. (2020).  
<sup>399</sup> § 394.912(9), Fla. Stat. (2020).  
<sup>400</sup> § 394.912(10), Fla. Stat. (2020).  
<sup>401</sup> § 394.9125(2), Fla. Stat. (2020).  
<sup>402</sup> § 394.9125(1), Fla. Stat. (2020).  
<sup>403</sup> § 394.914(1), Fla. Stat. (2020).  
<sup>404</sup> § 394.917(1), Fla. Stat. (2020).  
<sup>405</sup> § 394.917(2), Fla. Stat. (2020).  
<sup>406</sup> § 394.918, Fla. Stat. (2020).