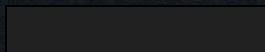


BEYOND THE CONVICTION

WHAT DEFENSE ATTORNEYS IN WASHINGTON STATE
NEED TO KNOW ABOUT COLLATERAL AND OTHER
NON-CONFINEMENT CONSEQUENCES OF
CRIMINAL CONVICTIONS

WASHINGTON
DEFENDER
ASSOCIATION



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Beyond the Conviction was written by Kim Ambrose, WDA resource attorney. Christie Hedman, director of the Washington Defender Association, edited the manual with assistance from program administrator Sarah Yatsko, who also supervised production.

The following persons and organizations have contributed “collaterally” in the compilation of this booklet and deserve thanks and recognition:

Hong Tran, *Staff Attorney*, Northwest Justice Project
McGregor Smyth, *Director*, Civil Action Project, Bronx Defenders
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Tracy Sarich, *Legal Intern*
ACLU of Washington

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Table of Contents:

I. Criminal History Records	5
II. Immigration.	6
III. Legal Financial Obligations	7
IV. Employment	8
V. Housing	10
VI. Public Benefits	12
VII. Family Issues	13
VIII. Driving	14
IX. Right to Possess Firearms	15
X. Voting and Jury	16
XI. Federal Student Loans	16
XII. Military Service	17
XIII. Traveling to Canada	17
XIV. Endnotes	18

Beyond the Conviction:

What Defense Attorneys Need to Know about Collateral and Other Non-confinement Consequences of Criminal Convictions

“In this brave new world, punishment for the original offense is no longer enough; one’s debt to society is never paid.”

- Jeremy Travis,
*Invisible Punishment: The Collateral
Consequences of Mass Imprisonment*

Who is this Booklet for?

The information in this booklet is intended for use by public defense attorneys in Washington State. It is not comprehensive. It is meant as a starting point for defenders to understand the hidden penalties clients may face after conviction. Defendants should understand potential civil and other consequences of a criminal conviction before they plead guilty.

This booklet also is for other criminal justice professionals, social service providers, community members or anyone who is concerned about the vast array of non-confinement penalties which follow persons with criminal convictions.

For a more detailed discussion of consequences of convictions in Washington, see *Consequences of Criminal Convictions in Washington*, available to WDA members and on-line at www.defensenet.org.

I. Criminal History Records

Criminal history, which is easily accessible to the general public, is a significant consequence of a criminal conviction. Criminal history record information is maintained centrally in Washington State through the

Washington State Patrol
Identification and Criminal History Section
3000 Pacific Avenue, PO Box 42633
Olympia, Washington 98504-2633
(360) 705-5100

Accessible: Criminal conviction and arrest information is readily available to the public via the internet. <https://watch.wsp.wa.gov/>. For a small fee, anyone - employers, landlords, potential love interests, etc. - may access any individual's criminal conviction record, including arrests under one year old and pending charges. Certain agencies have free access to criminal history information, e.g., criminal justice agencies and DSHS.¹

Correctible: WSP has a process for correcting criminal history which may be inaccurately recorded/reported through filing forms with the Washington State Patrol Identification and Criminal History Section in Olympia, Washington.²

Sealable: Certain convictions may be sealed by filing a Motion to Vacate/Seal with the court that entered the conviction:

Adult Felony convictions after July 1, 1984, may be sealed if the following criteria are met:³

Nonviolent, non-sex offenses only;

A Felonies cannot be sealed;

B Felonies: crime free for **10 years** after completion of all sentencing requirements and certificate of discharge has been issued; and

C Felonies: crime-free for **5 years** after completion of all sentencing requirements and certificate of discharge has been issued.

Adult Misdemeanor convictions may be sealed if the following criteria are met:⁴

No other convictions have been previously vacated; and

No restraining orders of any kind within the last 5 years;

No sealing for DUI's, sex offenses, obscenity or pornography under RCW 9.68, sexual exploitation of children under RCW 9.68A, or violent offense or attempt to commit violent offense under RCW 9.94A.030; and

Non-DV: crime free for **3 years** since completion of all sentencing requirements;

DV: crime free for **5 years** since completion of all sentencing requirements.

Juvenile Criminal History Data: Is accessible similar to adult data; however, the rules for sealing/vacating and destroying are different.⁵ As of June 10, 2004, a juvenile conviction may be sealed if the following criteria are met:⁶

Non-sex offense;

A Felonies cannot be sealed;

B Felonies: crime-free for **5 years** from the last date of release from confinement;

C Felonies: crime-free for **2 years** from the last date of release from confinement;

Misdemeanors and Gross Misdemeanors: crime-free for **2 years** from the last date of release from confinement;.

Destructible: Only **non-conviction data**⁷ can be destroyed or expunged from a person's criminal history record if the person has no prior convictions or subsequent arrests or charges and the following criteria are met:⁸

Favorable dispositions (e.g., acquittals and dismissals, but not dismissals after a successful period of probation, suspension or deferral of sentence) may be deleted from a person's criminal history record information **2 years** after entry of the disposition favorable to the defendant.

Arrest information not leading to conviction may be deleted after **3 years** from the date of arrest or issuance of citation or warrant.

Fingerprint and identifying data also may be destroyed if eligibility requirements are met.

PRACTICE TIP: Always go over criminal history with clients and remind them of the importance of sealing and destroying records as soon as they are eligible. Point them to the self-help resources found below.

RESOURCES: Good self-help resources are available:

CRIMINAL HISTORY/RECORDS: A Guide on When and How to Seal/Vacate Non-Violent Class B or C Felony Convictions Occurring on or after July 1, 1984, 2003, Northwest Justice Project, available at www.nwjustice.org.

A Guide on When and How to Challenge, Seal, Vacate or Expunge, 2001, Administrative Office of the Courts, and **Instructions for Vacating Misdemeanor and Gross Misdemeanor Convictions** with accompanying forms both available at the Washington Courts website <http://www.courts.wa.gov>.

II. Immigration

Perhaps the most severe collateral consequences of criminal convictions are those faced by **non-citizen defendants**. Removal (f.k.a. deportation) and inadmissibility will be triggered by certain – many – criminal dispositions. The law is complex. Nevertheless, defense counsel should never allow a non-citizen client to enter a plea without

understanding the immigration consequences. The following resources are available on the WDA website at www.defensenet.org:

Immigration Consequences of Criminal Conduct: An Overview for Criminal Defenders, Prosecutors and Judges in Washington State, by Ann Benson, Washington Defender Association's Immigration Project; and
An Immigration Analysis of the Offenses Under the Revised Code of Washington (RCW) with Chart, by Ann Benson with J.J. Rollins.

PRACTICE TIP: For technical assistance, WDA members should call or e-mail Jonathan Moore, Immigration Resource Specialist or Ann Benson, Director, Washington Defender Association's Immigration Project, at (206) 726-3332 or defendimmigrants@aol.com.

III. Legal Financial Obligations

Legal financial obligations⁹ ("LFOs") include:

- restitution;
- finer;
- crime victim penalty assessments;
- court costs;
- county or inter-local drug funds;
- court-appointed attorneys' fees and costs of defense; and
- any other financial obligation that is assessed to the offender as a result of a conviction.

LFOs begin accruing interest from the date of entry of judgment at the rate applicable to civil judgments (12%).¹⁰ Beginning June 10, 2004, courts may reduce or waive the interest portion of certain LFOs under limited circumstances upon motion by the offender after release from total confinement.¹¹

The full effect of these penalties on indigent clients' lives cannot be overstated. Until these obligations are fulfilled, an offender will be unable to seal or vacate a conviction or obtain a certificate of discharge necessary for the restoration of civil rights. For felony offenses committed after July 1, 2000, an offender may remain under the court's jurisdiction for purposes of enforcing LFOs "**until the obligation is completely satisfied, regardless of the statutory maximum for the crime.**"¹² For felony offenses committed before July 1, 2000, courts may enforce LFOs for an initial period of 10 years after the offender's release from total confinement or entry of the judgment and sentence (whichever is longer) which may be extended for an additional 10 years (20 years total). LFOs imposed in misdemeanor proceedings do not remain under the jurisdiction of the court for longer than one year, but remain civilly enforceable.

IV. Employment

Criminal convictions can result in ineligibility for a variety of jobs and occupational licenses in Washington. Although the Restoration of Employment Rights Act, RCW 9.96A, prohibits government entities from denying employment or occupational licenses to persons solely based on their felony convictions, there are numerous exceptions to this general rule.¹³

Employment Related to Vulnerable Adults and Children: Criminal background checks are required for persons who are employed by, contract with or are licensed by the Department of Social and Health Services (“DSHS”) to provide services to children or vulnerable adults.¹⁴ School districts and their contractors who have employees who will have regular unsupervised access to children are also required to do criminal background checks on their employees.¹⁵

Nursing Homes, Childcare, etc.: “Crimes against children or other persons”¹⁶ will prohibit persons from working in **nursing homes, adult family homes, boarding homes, and child care facilities.**¹⁷ This includes, among others, assault in the fourth degree. “Crimes of financial exploitation,”¹⁸ including theft in the third degree, will also make a person ineligible to work with vulnerable adults, e.g., in nursing homes. The time limits for ineligibility for such jobs may vary depending on the crime committed.

Persons who have **felony convictions for crimes against children, “spousal abuse,” and violent crimes** will be permanently prohibited from contracting with or being licensed by DSHS to provide any type of care to children or individuals with a developmental disability.¹⁹ Convictions for **assault or sex offenses not included in the permanent bar, any felony drug conviction, or any other felony** will disqualify individuals from licensing, contracting, certification, or from having unsupervised access to children or to individuals with a developmental disability for 5 years.²⁰

Schools: Crimes against children will disqualify persons from being **school employees, contractors with schools or being school bus drivers.**²¹ **Certified school employees,** e.g., teachers, are also required to have “good moral character” which means no convictions in the last ten years, including motor vehicle violations, which “would materially and substantially impair the individual’s worthiness and ability to serve as a professional within the public and private schools of the state.”²² **Volunteers in schools** may also be requested to provide criminal background checks; however, it is not statutorily required.²³

Federal Laws Affecting Employment Opportunities: Federal law prohibits **financial institutions** from employing a person who has been convicted of a crime of dishonesty, breach of trust, or money unless he or she has received written consent from the Federal Deposit Insurance Corporation (FDIC).²⁴ For purposes of this law, pre-trial diversion or

similar programs are considered to be convictions. Federal law also bars certain classes of felons from the following jobs:

working in the insurance industry without having received permission from an insurance regulatory official;²⁵

holding any of several positions in a union or other organization that manages an employee benefit plan;²⁶

providing healthcare services for which they will receive payment from Medicare;²⁷

working for the generic drug industry;²⁸

providing prisoner transportation;²⁹ and

employment in aviation security.³⁰

Other Jobs Affected: Other examples of jobs that are affected by certain types of convictions include (this list does not purport to include all jobs affected by criminal history):

law enforcement;³¹

tow truck operators contracting with Washington State Patrol;³²

Washington State Patrol assistance van drivers;³³ and

JRA employment or volunteer positions.³⁴

Jobs Requiring a Driver's License or Ability to Possess a Firearm: Since many jobs require the ability to drive, the penalty of losing a driver's license (see Section VIII) may prohibit many defendants from future employment, at least for a period of time. Similarly, the consequence of losing the right to possess a firearm will disqualify defendants from certain types of employment (e.g., security guards, federal park rangers, etc.).

Employment Discrimination:

Permissible Pre-employment Inquiries: Although some states ban the practice, in Washington employers and occupational licensing authorities are permitted to ask job applicants about and consider arrests not leading to conviction.³⁵ However, there is some limit. Because statistical studies regarding arrests have shown a disparate impact on racial minorities, it is an **unfair practice to ask about arrests older than 10 years** and inquiries must include whether the charges are still pending, have been dismissed or led to conviction of a crime involving behavior that would adversely affect job performance.³⁶ Certain organizations, such as law enforcement, state agencies and organizations that have direct responsibility for the supervision, care, or treatment of children, mentally ill persons, developmentally disabled persons, or other vulnerable adults are exempt from these restrictions.³⁷

Similarly, for inquiries concerning **convictions** to be considered "fair" under Washington's discrimination law they must concern **convictions less than ten years old (from the date of release from prison) and relating reasonably to the job duties.**³⁸

Certain agencies and organizations, e.g., schools and DSHS, are exempt from this requirement.

Racial Discrimination Claims Based on “Disparate Impact”: Federal courts have found that a policy of asking about criminal records has a “disparate impact” on African Americans and Hispanics. Therefore, African Americans and Hispanics who have been denied employment based on their criminal history record may have a basis for a Title VII claim with the Equal Employment Opportunity Commission (EEOC).

V. Housing

Private Housing: In Washington, landlords are permitted to screen and deny housing to individuals based on criminal history. A private landlord is not permitted to deny housing for discriminatory reasons, e.g., solely based on a history of domestic violence without inquiring as to whether applicant was a victim or perpetrator;³⁹ or solely because of past drug addiction.⁴⁰ **A private landlord may deny housing based on a reasonable belief that an applicant is currently engaged in illegal drug use.**⁴¹ A landlord also may deny housing based on a conviction for manufacture or distribution of a controlled substance.⁴²

The statutes governing eviction from residential property⁴³ allow landlords to evict a person who has been **arrested (whether or not convicted) for assault occurring on the premises or unlawful use of a firearm or other deadly weapon on the premises.**⁴⁴ A landlord also may evict a tenant for engaging in **gang or drug related activity** or allowing another to engage in such activity on the premises.⁴⁵ Different laws apply to **mobile home parks** and allow for eviction for criminal activity which threatens the health, safety or welfare of the tenants.⁴⁶

Public Housing: Federal law regulates admission and eviction from housing programs funded through the U.S. Department of Housing and Urban Development (“HUD”). There are different types of HUD funded housing programs which are generally administered through local Public Housing Authorities (“PHAs”) like the Seattle Housing Authority. These programs include, among others, public housing projects, Section 8 voucher programs and multi-family housing programs (a.k.a. project-based assistance.) Different housing providers receiving the same type of HUD funding may have different admission and eviction requirements; however, HUD requires landlords to deny housing to applicants who have committed certain crimes.

Mandatory Lifetime Bans on Admission:

Households which include a **registered sex offender.**⁴⁷

Households which include a person convicted of the **manufacture or production of methamphetamines on the premises of a federally assisted housing program.**⁴⁸

Other Mandatory Bans on Admission:

3 year ban from the date of eviction against any household which includes an individual who was **evicted from federal assisted housing for drug related activity**, unless the housing provider determines that the evicted household member has successfully

completed a supervised drug rehabilitation program approved by the PHA or the circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).⁴⁹

Households which include a member who the housing provider has a **reasonable belief is currently engaged in illegal use of a controlled substance** or whose **pattern of illegal drug use** may threaten the health, safety or right to peaceful enjoyment of the premises by other residents.⁴⁹

Households which include those whom the housing provider believes is engaging in a pattern of **alcohol abuse** that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.⁵¹

Permissible Exclusion: A HUD housing provider is permitted to exclude any household which includes a member currently engaging in, or has engaged in during a reasonable time before the admissions decision, in **violent criminal activity or other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or staff.**⁵²

Mandatory Eviction from Federally Funded Housing Programs: **Manufacture or production of methamphetamines in any HUD funded housing program**, with the exception of project-based multi-family housing, will result in **mandatory eviction.**⁵³ Reasonable cause to believe there is current drug use or reasonable cause to believe that illegal drug use or pattern of illegal drug use may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents also will result in a mandatory eviction from federally funded public housing.⁵⁴ Households which include a member who engages in a pattern of alcohol abuse that interferes with other tenants rights also must be evicted by federally funded housing programs.

PRACTICE TIP: Be sure to **ask your client** whether he/she lives in government subsidized housing and advise the client that a criminal conviction could result in the loss of their housing and also affect their ability to get into government funded housing; especially HUD funded housing, in the future.

Discretionary Eviction from Federally Funded Housing Programs: **Drug related criminal activity “on or off” the premises** of a public housing project is grounds for eviction from the public housing complex and allows PHAs authority to evict family members for the drug related activity of other household members or guests.⁵⁵ There may be an “innocent tenant” defense under Washington law⁵⁶ or some municipal codes. **Drug related criminal activity “on or near” the premises** of other HUD funded projects is grounds for eviction.⁵⁷

Public housing providers may evict persons for other **criminal activity which threatens the health, safety or right to peaceful enjoyment of the premises** by other residents, persons residing in the immediate vicinity or on-site property management staff. The housing provider has broad discretion to consider all relevant circumstances. A federally

funded housing provider may also evict tenants who are **fleeing felons or probation or parole violators**.⁵⁸

PRACTICE TIP: In addition, ask your client if there is a pending eviction proceeding for his or her household and, if not, to let you know if one is started. For purposes of preserving a client's housing, it is generally better to wait to resolve the criminal matter until after the eviction proceeding is resolved unless you are confident that your client will be found not guilty. Contact a housing specialist through the Northwest Justice Project in your region.

VI. Public Benefits

In 1996, Congress passed the welfare reform act⁵⁹ creating Temporary Assistance for Needy Families ("TANF"), and imposing a lifetime ban on receiving cash assistance and food stamps to persons convicted of a state or federal felony drug offense. Washington has modified the ban; however, significant eligibility restrictions remain.⁶⁰

There are 4 ways criminal matters can affect your client's **eligibility for public assistance**:

1. **Felony Drug Convictions:** As of September 1, 2005, a felony drug conviction no longer makes a person ineligible for TANF benefits. See E2SSB 5213, 2005 Washington Legislature, amending RCW 74.08.025(4). Prior to that, any felony drug conviction (possession, use, delivery, conspiracy to or attempt to possess or deliver), adult or juvenile, committed after August 21, 1996 made a person ineligible for cash assistance through TANF/State Family Assistance (SFA) and, until June 10, 2004, food assistance⁶¹ unless certain criteria were met.

NOTE: Under pre-September 2005 law, pregnant drug felons received SFA during pregnancy, if they met other TANF/SFA eligibility requirements; however, they became ineligible as soon as their pregnancy ended.⁶⁴ Drug convictions do not affect an individual's ability to receive **General Assistance Unemployable ("GAU")**.⁶⁵

2. **Fleeing Felons:** A felony warrant will make a person ineligible for cash assistance and food assistance, including TANF, SFA, and GAU. In order to be "fleeing" the person must be acting with intent to avoid prosecution or confinement – the person must have knowledge of the warrant to be considered "fleeing."⁶⁶
3. **Probation or Parole Violators:** Currently violating a condition of probation or parole will make a person ineligible for cash assistance and food assistance (TANF, SFA, and GAU).⁶⁷ A person is violating probation or parole when a court has issued an arrest warrant for them after being notified by the corrections officer that the person failed to comply with a requirement of probation or parole.

Convictions for Welfare Fraud: A conviction for unlawful practices in obtaining cash assistance will render a person ineligible for cash assistance under **TANF** as determined by the sentencing court, but in no event less than 6 months.⁶⁸

Incarceration, SSI and Other Federal Benefits: Although a person will remain eligible for many federal benefits despite criminal convictions, **periods of incarceration** may affect a person's receipt of benefits such as **Supplemental Security Income (SSI)**, **Social Security Disability Insurance (SSDI)**, and **veteran's benefits**. For example, SSI payments will continue until a person has been in jail or prison for a full calendar month. SSDI payments will continue until a person is convicted and has spent 30 days in jail or prison. If an SSI recipient is incarcerated for more than 12 consecutive months, benefits will be terminated entirely and the person will have to reapply. SSDI recipients may remain on the rolls no matter how long a period of incarceration; however, they will need to request reinstatement of cash benefits prior to or upon release.

PRACTICE TIP: For mentally ill clients who rely on SSI to survive, the day of the month that they are released may make a difference in whether they lose an entire month's worth of SSI. The resource below explains the specific rules which apply and might be used to advocate for these clients' particular needs.

RESOURCE: *Arrested? What Happens to Your Benefits If You Go to Jail or Prison?: A Guide to the Federal Rules on SSI, SSDI, Medicaid, Medicare and Veterans Benefits for Adults with Disabilities*, February, 2004, Bazelon Center for Mental Health Law available at www.bazelon.org.

VII. Family Issues

Collateral Proceedings: Parents who are involved in criminal proceedings may also be involved in collateral proceedings with the Department of Social and Health Services ("DSHS"), i.e., dependency and/or termination of parental rights proceedings, in family law proceedings or in child support enforcement proceedings. Defense attorneys should be aware of the following:

Clients may be making both in and out of court statements in the context of these civil collateral proceedings.

Evidence may be obtained from these collateral proceedings which might affect the criminal case.

Criminal history, conviction and non-conviction, may be admissible in dependency proceedings insofar as it is relevant to parental fitness.

Certain felony convictions are considered "aggravated circumstances" and may result in the "fast-track" termination of parental rights.⁶⁹

Child support obligations continue to accrue when a person is incarcerated, unless a modification is requested.

PRACTICE TIP: For clients who are parents, find out if they are involved in dependency proceedings, get permission to talk to their dependency attorney and remind your client that statements made in the context of those proceedings still may be used against them in criminal proceedings.

PRACTICE TIP: For clients with child support orders, advise them that they may seek a modification of their child support orders while they are in DOC. Otherwise, they may face large amounts of back support owed when they are released. Northwest Justice Project has good self-help resources on this issue on their website, www.nwjustice.org.

Foster Parents: Before issuing a foster care license, DSHS must do a criminal background check on the applicant and all household members 16 years and older who are not already foster children.⁷⁰ Certain criminal convictions⁷¹ of an applicant or an applicant’s household member may preclude licensing, at least for a period of time; however, DSHS has discretion to administratively approve individuals with criminal convictions under “extraordinarily rare circumstances.”⁷²

PRACTICE TIP: Ask juvenile clients who are 16 and older (but not foster children themselves) if they reside with caretakers who are licensed foster parents. If they do, check with DSHS licensors to determine whether their convictions could result in revocation of their home’s foster license.

Adoptive Parents: Adoptive parents must submit to a criminal background check which is included in the “pre-placement report” setting forth all relevant information relating to the fitness of the person as an adoptive parent.⁷³ Criminal history information, which includes convictions, pending charges and arrests less than a year old, may be included in the report, but do not create any automatic bars to adoption.

EXCEPTION: The same convictions which prohibit a person from becoming a licensed foster parent (e.g., crimes against children, violent crimes, et al.) will bar a person from adopting a child through the Department of Social and Health Services (i.e., children who are in court ordered out of home placement).

VIII. Driving

Convictions for the following offenses require suspension, revocation or disqualification of driving privileges for various statutorily mandated periods of time:

DUI⁷⁴ or Physical Control;⁷⁵
DWLS/R 1st or 2nd degree;⁷⁶
Vehicular Assault;⁷⁷
Vehicular Homicide;⁷⁸

Racing or Reckless Driving;⁷⁹
Attempting to Elude;⁸⁰
Hit and Run Attended;⁸¹
Taking a Motor Vehicle (driver only);⁸²
Any felony involving a Motor Vehicle;⁸³
Unattended Child in Running Vehicle (2nd and subsequent offenses);⁸⁴
Reckless Endangerment in a Construction Zone;⁸⁵
Minor in Possession of Alcohol (MIP) OR Drugs (VUCSA) (includes diversions);⁸⁶ and
Minor in Possession of a Firearm.⁸⁷

Some of these offenses require longer periods of suspension depending on the number of prior convictions (e.g., DUI) and some have criteria for early reinstatement (e.g., MIP). Certain convictions and serious traffic violations will disqualify persons from holding **commercial driver's licenses** for various periods.⁸⁸ **Temporary restricted driver's licenses** may be issued by the Department of Licensing under certain circumstances to individuals engaged in occupations or trades that make motor vehicle operation essential.⁸⁹

IX. Right to Possess Firearms

Persons convicted of felonies, crimes of domestic violence or who have been involuntarily committed under RCW 71.05.320, 71.34.090, 10.77, or equivalent statutes of another jurisdiction are prohibited from owning or possessing firearms until their right to do so has been reinstated.⁹⁰

Reinstatement: A person who is prohibited from possessing a firearm because of a criminal conviction may petition the court for reinstatement of this right under the following circumstances:⁹¹

Felony offense: after 5 years crime free in the community, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of his or her offender score.

Non-felony offense: after 3 years crime free in the community, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score and the individual has completed all conditions of the sentence.

Federal Law: Persons convicted of felonies or DV misdemeanors are also prohibited from possessing firearms under federal law.⁹² Federal law also prohibits fugitives, drug addicts, illegal aliens, persons dishonorably discharged from the military and persons subject to domestic violence protection orders from possessing firearms.⁹³ In addition, persons who have been charged with a felony, but not yet convicted, are prohibited by federal law from *acquiring* a firearm.⁹⁴ What constitutes a conviction is determined in accordance with the law of the jurisdiction in which the proceedings were held and “any conviction which has

been expunged, or set aside or for which a person has been pardoned or has had civil rights restored” shall not be considered a conviction unless “such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.”⁹⁵ Persons with federal convictions must seek restoration of the firearm rights through the Bureau of Alcohol, Tobacco and Firearms; however, currently there is no process for doing so.⁹⁶

NOTE: A person may have his right to possess firearms restored under Washington law before being eligible to possess firearms under federal law. Restoration under Washington law is triggered by the period of time one spends in the community crime-free, not by the restoration of one’s civil rights.⁹⁷ Restoration of one’s civil rights under Washington law requires a **certificate of discharge**⁹⁸ which may be more difficult to obtain. See **Section X**.

X. Voting and Jury Duty

Under Washington law, a person with a felony conviction is prohibited from voting and serving on a jury **until all sentencing requirements are fulfilled, including payment of all legal financial obligations.**⁹⁹ If a convicted felon receives a suspended sentence, his or her civil rights may be restored upon completion of the suspended sentence.¹⁰⁰ Otherwise, a **certificate of discharge**¹⁰¹ or a pardon¹⁰² is required in order to restore a convicted felon’s right to vote or serve on a jury. Since a certificate of discharge is conditioned upon payment of all legal financial obligations, if a convicted felon fails to pay them off, he or she may permanently lose the right to vote or serve on a jury.¹⁰³

XI. Federal Student Loans

Since 1998, a person convicted of **any drug offense**, including possession of marijuana, is not eligible for any federal higher education grant, loan or work study assistance for the following time periods:¹⁰⁴

1. Convictions for possession of a controlled substance:

- 1st Offense – 1 year from date of conviction.
- 2nd Offense – 2 years from date of conviction.
- 3rd Offense – indefinite period of suspension.

2. Convictions for delivery:

- 1st Offense – 2 years from date of conviction.
- 2nd Offense – indefinite period of suspension.

The student may receive a **waiver**, if the student successfully completes an approved drug rehabilitation program.¹⁰⁵

NOTE: Since 2001, bills have been introduced in Congress to repeal the 1998 amendment to the Higher Education Act restricting student loans based on drug convictions. As of January, 2004, the most recent of these bills, H.R. 685, had 64 co-sponsors.¹⁰⁶

XII. Military Service

Felony convictions generally will preclude military service; however, each branch has the authority to make exceptions.¹⁰⁷ For example, the Army may grant a waiver for certain felony convictions that are over 1 year old (from date of completion of sentencing requirements) and for juvenile felonies that are over 5 years old. The Navy, however, considers all felonies disqualifying and will grant waivers only for misdemeanor convictions (2 or 3 at the most).

PRACTICE TIP: For juvenile or adult clients considering military service, contact a local recruiter to determine whether certain convictions will preclude service or can be waived.

XIII. Traveling to Canada

Canadian border officials at the Washington border have the ability to run criminal history checks and may deny entry to individuals based on “inadmissible” criminal history. Under Canadian law, a foreign national may be inadmissible to Canada for, among other reasons, “committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.”¹⁰⁸ A conviction is not required, so admission may be denied to those who received dismissals after deferred prosecution or stipulated orders of continuance. Canada’s “indictable” offenses include many offenses which are misdemeanors in the U.S., for example, DUIs.¹⁰⁹ In addition, two or more convictions for offenses which are not “indictable” will be the basis for inadmissibility.¹¹⁰

A person may overcome criminal inadmissibility by either being “deemed rehabilitated” because the offense is over 10 years old or by paying a fee and applying for “rehabilitation” through the Canadian consulate for convictions which are between 5 and 10 years old.¹¹¹ For convictions less than 5 years old, a person may apply for a “temporary resident’s permit.”¹¹²

XII. End Notes

1. RCW 10.97.050; RCW 10.97, 100.
2. RCW 43.43.730; RCW 10.97.080.
3. RCW 9.94A.640.
4. RCW 9.96.060.
5. RCW 13.50.50.
6. ESHB 3078, Chapter 42, 2004 Washington Laws, signed by Governor March 22, 2004.
7. RCW 10.97.030(2).
8. RCW 10.97.060; WAC 446-16-025.
9. RCW 9.94A.030(27).
10. RCW 10.82.090, amended by SSB 5168, effective 6/10/04; RCW 4.56.110, amended by HB 2485 effective 6/10/04.
11. SSB 5168, amending RCW 10.82.0090(2), allows the court to reduce or waive interest on LFOs “as an incentive for the offender to meet his or her legal financial obligations” and if the offender has shown that he or she has “personally made a good faith effort to pay, that the interest accrual is causing a significant hardship, and that he or she will be unable to pay the principal and interest in full” without a reduction or waiver. A “good faith effort” means payment of the principal in full or 24 consecutive monthly payments, excluding payments mandatorily deducted by DOC. The court may not waive interest on the restitution portion of the LFO and may only reduce it if the principal of the restitution has been paid in full.
12. RCW 9.94A.760(4).
13. RCW 9.96A.020.
14. RCW 43.43.832.
15. RCW 28A.400.303.
16. RCW 43.43.830(5).
17. RCW 43.43.842; WAC 388-97-203 (nursing homes); WAC 388-76-685 (adult family homes); WAC 388-06-0170 (access to children).
18. RCW 43.43.830(7).
19. WAC 388-06-0170.
20. WAC 388-06-0180.
21. RCW 28A.400.320 (school employees); RCW 28A.400.330 (school contractors); WAC 180-20-101 (school bus drivers).
22. WAC 180-86-013.
23. RCW 28A.320.155.
24. 12 U.S.C. § 1829.
25. 18 U.S.C. § 1033(e) (2).
26. 29 U.S.C. §§ 504, 1111.
27. 42 U.S.C. § 1320a-7.
28. 21 U.S.C. § 335a.
29. 42 U.S.C. § 13726b.
30. 49 U.S.C. § 44935; 49 U.S.C. § 44936.
31. See WAC 139-05-220.
32. WAC 204-91A-060.
33. WAC 204-93-040.
34. RCW 72.05.440.
35. But see RCW 46.20.391 (occupational licenses).
36. WAC 162-12-140(3).
37. Id.
38. RCW 49.60 et seq.; WAC 162-12-140(3).
39. See *Alvera v. C.B.M. Group et al.*, No. CV 01-857-PA, Consent Decree (D. Or. 2001)(denying housing to victims of domestic violence has disparate impact on women and as such constitutes unlawful sex discrimination), 42 U.S.C. § 3604 et seq. (prohibiting discrimination based on sex).

40. 24 C.F.R. § 100.201(a) (2).
41. 42 U.S.C. §3602(h) (3); 24 C.F.R. §100.201(a) (2).
42. 42 U.S.C. § 3607; 24 C.F.R. § 100.10(a) (4).
43. RCW 59.16 et seq. (Unlawful Detainer Statute), RCW 59.18 et seq. (Residential Landlord-Tenant Act).
44. RCW 59.18.130(8) (a) and (b).
45. RCW 59.18.130(6) and (9).
46. RCW 59.20 et seq. (Mobile Home Landlord-Tenant Act).
47. Quality Housing and Work Responsibility Act of 1998 (QHWRA) § 578, 112 Stat. 2461, P.L. 105-276; see also 66 Fed. Reg. 28,776 (May 24, 2001).
48. See 66 Fed. Reg. 28, 776 (May 24, 2001).
49. Id.
50. Id.
51. Id.
52. Id.
53. Id.
54. Id.
55. U.S. Dept' of Housing and Urban Development v. Rucker, 122 S.Ct. 1230, 152 L.Ed.2d 258 (2002); see also QWHRA § 512, P.L. 105-276 (1998); 66 Fed. Reg. 28,776 (May 24, 2001).
56. RCW 59.18.130(6).
57. QWHRA §§ 576(d), 577 and 579; see also 66 Fed. Reg. 28,776 (May 24, 2001).
58. QHWRA § 512(b); 42 U.S.C. § 1437f(d)(1)(B)(v); 66 Fed. Reg. 28,784 (HUD comments).
59. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193.
60. 21 U.S.C. § 862a.
61. ESB 6411, passed by the 2004 Washington legislature, effective 6/10/04, amends RCW 74.08.025 by restoring felons' rights to food assistance.
62. RCW 74.08.025(4); WAC 388-442-0010.
63. Persons assessed as dependent but not in treatment because there are no spaces available are not meeting the treatment requirement. Eligibility begins when the client enters treatment.
64. WAC 388-442-0010(3).
65. RCW 74.04.005(6).
66. WAC 388-442-0010(1)(a).
67. WAC 388-442-0010(1)(b).
68. RCW 74.08.290.
69. RCW 13.34.132.
70. WAC 388-06-0110.
71. WAC 388-06-0170; 388-06-0180.
72. Children's Administration Policy 01-07, Reissued January 29, 2004.
73. RCW 26.33.190.
74. RCW 46.61.502.
75. RCW 46.61.504.
76. RCW 46.20.342.
77. RCW 46.20.285.
78. Id.
79. RCW 46.61.500,530; RCW 46.20.285.
80. RCW 46.61.024.
81. RCW 46.52.020.
82. RCW 9A.56.070; RCW 46.20.285
83. RCW 46.20.285.
84. RCW 46.61.685.
85. RCW 46.61.527.
86. RCW 46.20.265.
87. RCW 13.40.265.
88. RCW 46.25.090.

89. RCW 46.20.391.
90. RCW 9.41.040, 045, 047.
91. RCW 9.41.041(b).
92. 18 U.S.C. § 922(g).
93. Id.
94. 18 U.S.C. § 922(n).
95. 18 U.S.C. § 921(a)(20).
96. 18 U.S.C. §925(c) But see *United States v. Bean*, 123 S.Ct 584 (2002)(The federal district court had no authority to restore petitioner’s right to possess firearms even where Congress has refused to provide a process through the ATF for restoration of rights.)
97. RCW 9.41.041(b).
98. RCW 9.94A.637.
99. RCW 29A.08.520 (voting), RCW 2.36.070 (jury duty), RCW 9.94A.637 (certificates of discharge).
100. RCW 9.92.066.
101. RCW 9.94A.637.
102. See RCW 9.94.885 (governor’s clemency and pardon board), RCW 9.95.260 (indeterminate sentence review board).
103. RCW 9.94A.637, amended by SSB 5168, effective 6/10/04.
104. See Federal benefits found under 20 U.S.C. §1070 et seq. and 42 U.S.C. §2751 et seq.; Higher Education Act, 20 U.S.C. §1091(r)(1).
105. 20 U.S.C. §1091(r) (2).
106. For information on H.R. 685 and the reform movement, go to www.raiseyourvoice.com.
107. 10 U.S.C. §504, 32 C.F.R. §96.1 et seq.
108. Immigrant and Refugee Protection Act [Canada], 36(2)(c).
109. Criminal Code [Canada], 253-255.
110. Immigration and Refugee Protection Act, 36(2)(b).
111. Immigration and Protection Regulations [Canada], 18(2).
112. Immigration and Protection Regulations, 179.