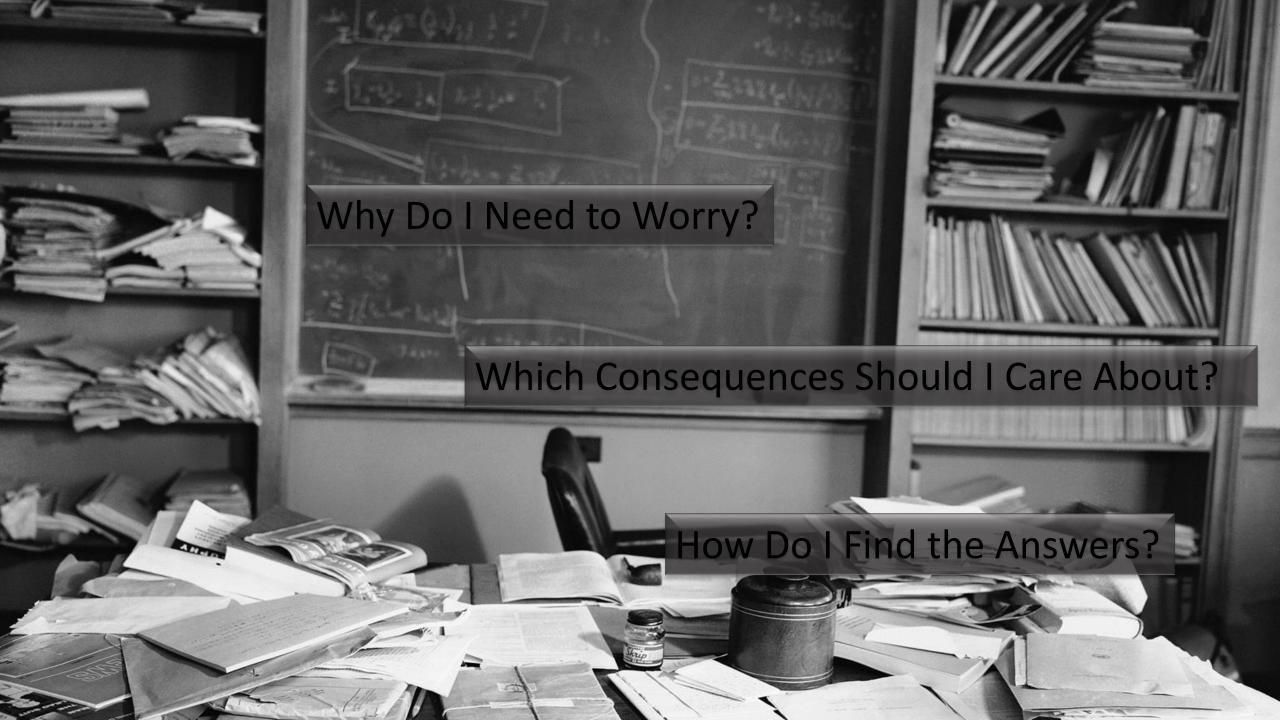
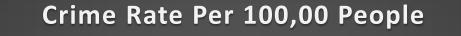
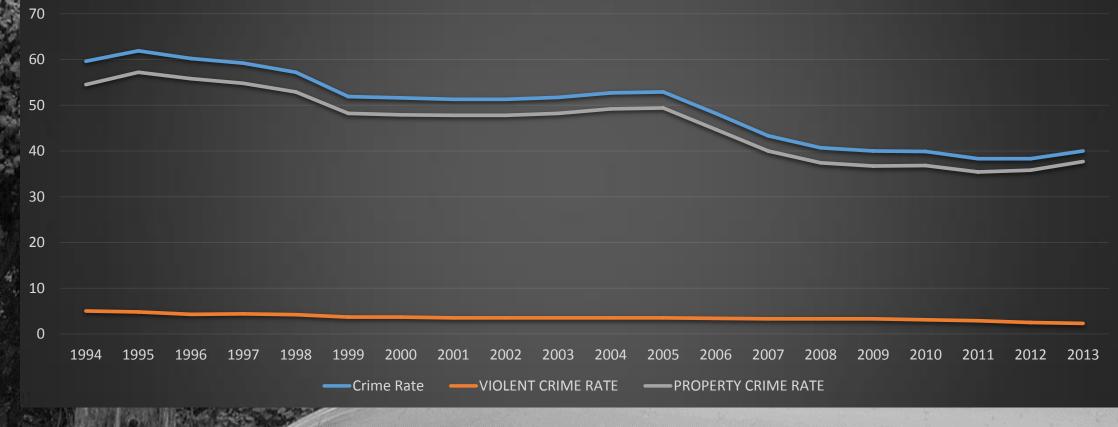
COLLATERAL CONSEQUENCES

Travis Stearns Washington Appellate Project



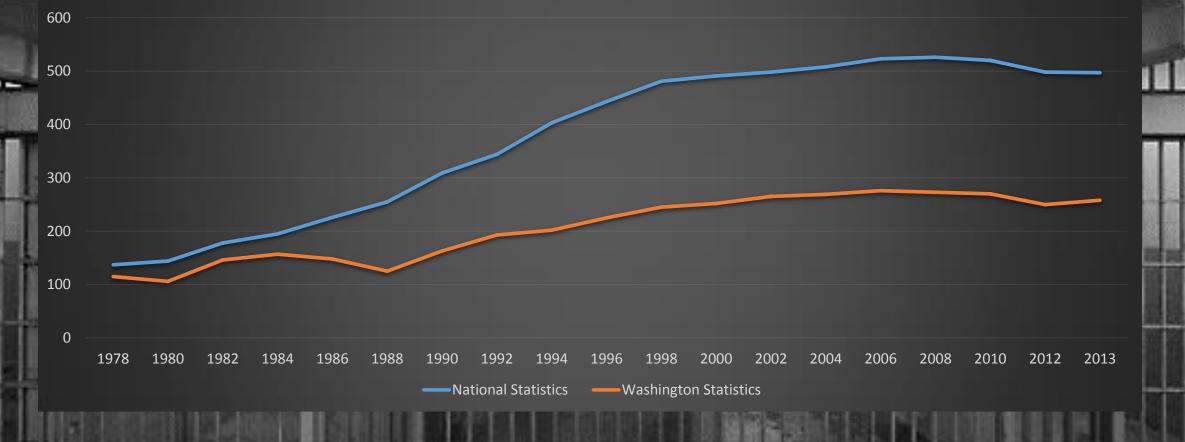
Washington Crime Rate





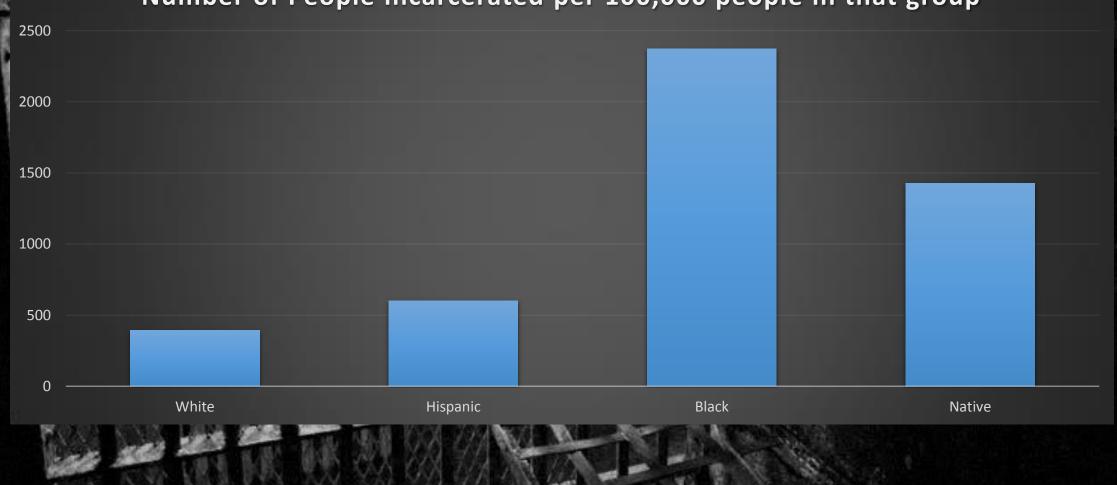
Imprisonment In Washington and the U.S.





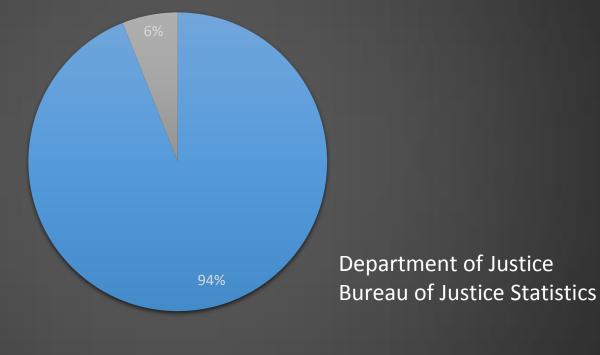
Washington Incarceration by Ethnicity/Race

Number of People incarcerated per 100,000 people in that group



Most Cases End In Plea Bargains

State Criminal Convictions



Plea Bargains Trials



Ethics: Rules of Professional Responsibility

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Right to Effective Assistance: •

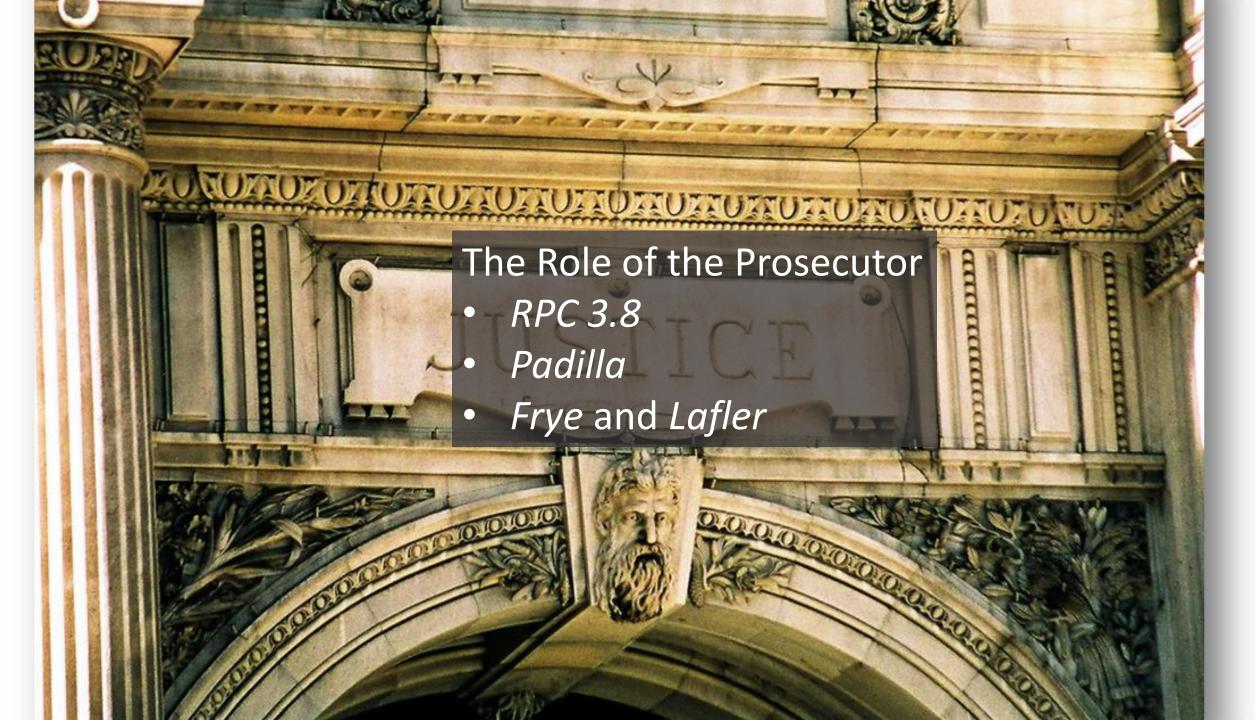
- Kentucky v. Padilla
- State v. Sandoval ullet
- State v. Blazina •

TRUST

TISED

Obligation to Effective in Plea Bargaining
Lafler v. Cooper/Missouri v. Frye

• State v. Maynard





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Setting Priorities: Client Driven Representation



Resources



National Inventory of the Collateral Consequences of Conviction

• www.abacollateralconsequences.org



Washington Defender Association Immigration Project

• www.defensenet.org



Collateral Consequences Resource Center

• www.ccresourcenter.org



FEEDBAC



State v. Jermaine Graves



- Walking Down the Street Drinking a Beer
- Lacks Identification; does not know about the shoplift incident
- Arrested for theft and obstruction

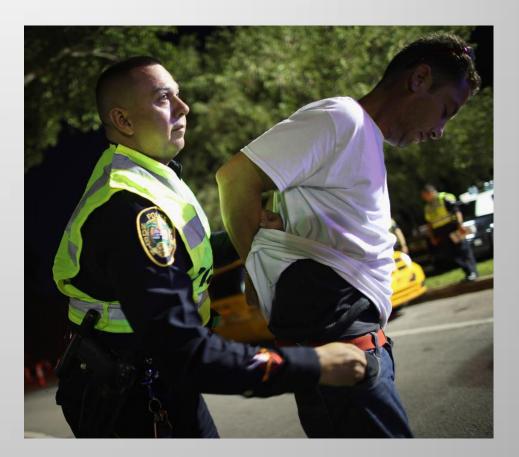
State v. Jermaine Graves



- Arrested for theft and obstruction
- Concerned about
 - Incarceration and Criminal History
 - Housing
 - Public Benefits
 - Legal Financial Obligations

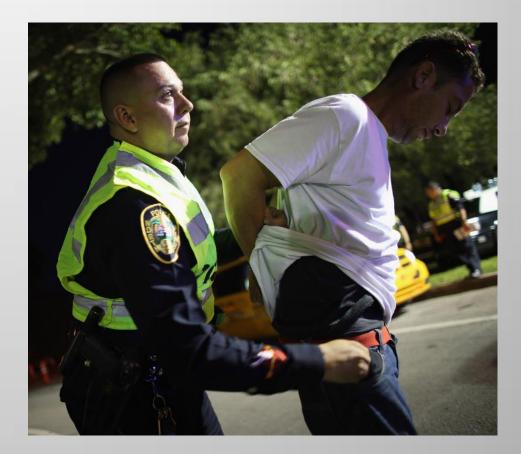
State v. Jonathan Larson

- Stopped for expired tags
- Search of vehicle produces possible controlled substances
- Charged with Possession of Marijuana Under 19 and DWLS 3



State v. Jonathan Larson

- Charged with Possession of Marijuana Under 19 and DWLS 3
- Concerned about
 - Incarceration and Criminal History
 - Housing
 - Public Benefits
 - Financial Aid
 - Employment
 - Driving Rights
 - Legal Financial Obligations



State v. Matthew King



- Charged with Assault 4
- Drinking at a bar
- Got into a fight with another person, who was injured
- Does not remember the fight

State v. Matthew King



- Charged with Assault 4
- Concerned with
 - Incarceration and Criminal History
 - Employment
 - <u>Public Benefits</u>
 - Firearm Rights
 - <u>Veteran's Services</u>
 - <u>Restoration of Civil Rights</u>
 - Legal Financial Obligations

Other Important Consequences



- Immigration
- Family Rights
- Sex Offender Registration
- <u>Competency and Insanity Pleas</u>
- Travelling Outside the Country

How Do I Remember Everything?



Traveling Outside the Country

Jonathan

Certain convictions will preclude overseas travel

<u>Canada</u>

• May preclude for an indictable offense, which includes a conviction for DUI

Matthew

Other

Rehabilitation

What you should do

- Consult with an immigration specialist
- Avoid certain convictions

Jermaine

Driving Rights





Driving Rights

Jermaine

Revocation or Suspension of Right to Drive

 Convictions for Certain Offense will Require Suspension or Revocation of Driving Privileges

Temporary Restricted Licenses

May be issued under certain circumstances

Jonathan

Matthew

Other



Employment

Iermaine

Can result in ineligibility for jobs and licenses

Restrictions

Convictions may specifically exclude some professions

<u>Licenses</u>

 Loss of Driving/Firearm Possession Rights may impact employment

Matthew

Other

Jonathan

Private Housing

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Private Housing

May *Deny Housing* when:

- Reasonable belief that tenant is using illegal drugs
- Where tenant has a prior conviction for manufacture or distribution of controlled substances

May *Evict from Housing* when:

• Tenant arrested for assault or firearm/deadly weapon possession

Jonathan

• Gang or drug related activity

Jermaine

<u>Mobile Home Parks</u>: Where criminal activity threatens the health, safety or welfare of the tenants

Matthew

Other

Public Housing

Public Housing

Jermaine

<u>Eligibility</u>

• Federal Rules may ban for certain offenders from housing

<u>Eviction</u>

 Mandatory for certain offenses and discretionary where criminal activity threatens the health, safety or the right of peaceful enjoyment of others

Jonathan

Matthew

Other

Public Benefits

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Public Benefits

Public Assistance

- Felony Drug Convictions: Still eligible for TANF benefits
- Fleeing Felons and Probation/Parole Violators: Ineligible for TANF, SFA and GAU
- Welfare Fraud Conviction: Ineligible for TANF for no less than six months

Incarceration: May temporarily effect SSI, SSDI and veteran's benefits

<u>What you should do</u>: Advise client on status of warrants or other blocks to entitlements

Jermaine

<u>Jonathan</u>

Matthew

<u>Other</u>

Firearm Possession



Firearm Possession

Right to Posses a Firearm

Jermaine

 Convictions or NGRI for Felonies, DV crimes and Involuntary Commitment restrict right to possess firearms

<u>Reinstatement</u>

- Felony: After five years crime free in the community
- Misdemeanors: After three years crime free in the community

Jonathan

<u>Federal Law</u>

 Also restricts the right to possess firearms and place additional requirements on many offenses, most of which are violent

Matthew

Other

Restoration of Civil Rights

Restoration of Civil Rights

<u>Voting Rights</u>

- Lose right to vote when convicted of any felony offense
- Provisional restoration: Upon completion of sentence and community custody
- Revocation: When a person has willfully failed to comply with Legal Financial Obligations

Certificate of Discharge

Jermaine

• Issued by court to certify that all requirements of the sentence, including payment of LFOs has been completed

Matthew

Other

• Does not remove conviction, domestic violence restrictions, relieve the duty to register or restore firearm rights

Jonathan

Legal Financial Obligations

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Legal Financial Obligations

LFOs (RCW 9.94A.760)

• Fines, Fees, Restitution

<u>Interest</u>

• 12%, until the obligation is satisfied

Modification

• Requires manifest hardship

<u>Enforcement</u>

• At any time the defendant remains under the court's jurisdiction

<u>Jermaine</u>

Jonathan

Matthew

<u>Other</u>

Juvenile Sentence Consequences

Juvenile Sentence Consequences

Incarceration: JRA and Detention

- Based Upon Standard Ranges
- Past History Will Follow Client into Adulthood

Probation

Conditions may be Onerous

Jermaine

- They can include
 - Curfews and No contact orders
 - Behavioral Modification programs like Drug Treatment and Anger Management

Matthew

Other

Jonathan

Student Loans

Student Loans

<u>General Rule</u>

 No denial of financial aid if a student is not convicted of a crime while enrolled in school

May Become Ineligible if Convicted while Enrolled

- *Drugs*: May effect eligibility
- <u>Rehabilitation</u>: A student who loses eligibility may be restored where rehabilitated

<u>What you should do:</u>

• Get latest information at Federal Student Aid web site

<u>Jermaine</u>

Jonathan

Matthew



Military Service

Military Service

Felony convictions Generally Preclude Military Service

Army Exceptions:

Jermaine

• Adult felonies: More than one year since completed sentencing requirements

Jonathan

• Juvenile felonies: Adjudication is more than five years old

<u>Navy Exceptions</u>: All felonies are disqualifying and waivers are only available for misdemeanors

Matthew

Other

Veteran's Services

Veteran's Services

Eligibility for Services

Understand the difference between 59 and 61 day sentences

Fleeing Felons

Jermaine

Jonathan





Incarceration

Incarceration

Time Spent in Custody

- Jail Alternative and Community Service Eligible?
- Suspended Sentence Ramifications

Future Consequences

Jermaine

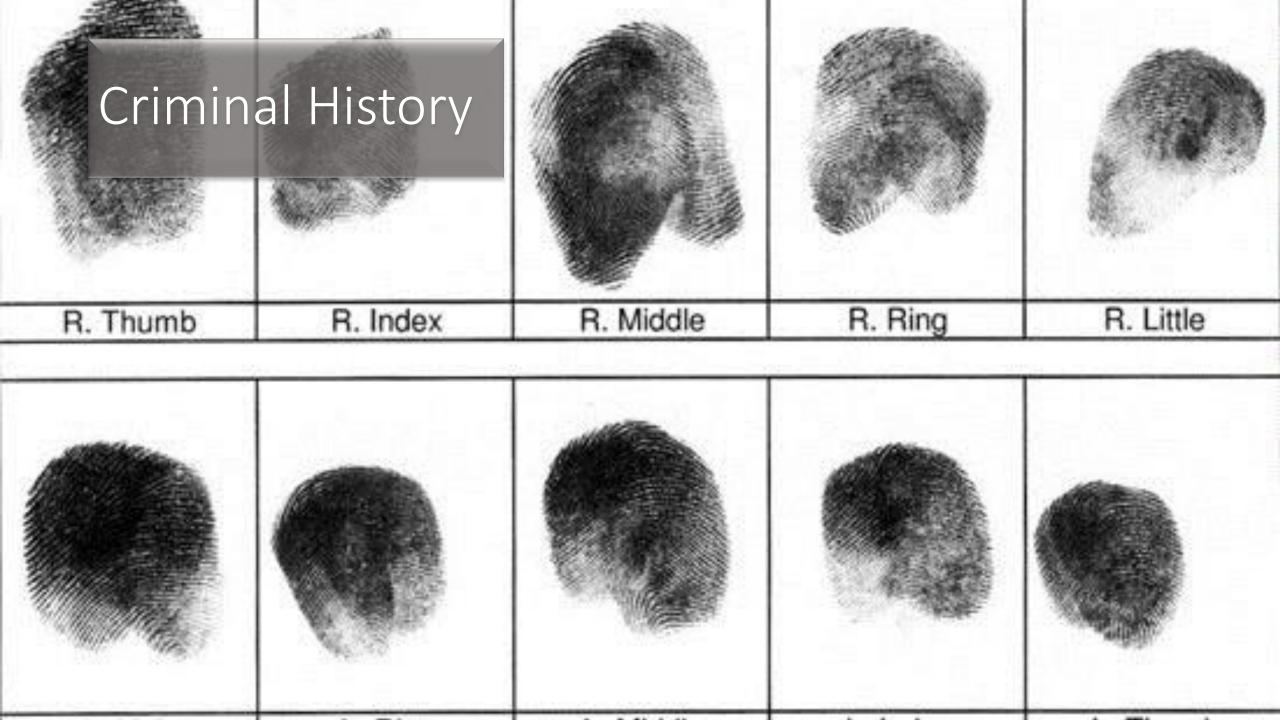
- Potential Scoring for Future Felonies
- Ineligibility for Future Programs (Deferred Sentences)

Jonathan

Early Release: Good time, work release and early release date

Matthew

Other



Criminal History

<u>Criminal History</u>

• Maintained by the Washington State Patrol

Future Consequences

• Increases SRA score and penalties

<u>Sealing</u>

• DCH may be sealed under certain conditions after enough time has elapsed





Immigration Consequences

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Immigration Consequences

Immigration status will affect every stage of the criminal process

Consequence: Deportation and permanent banishment from the U.S.

• "Preserving the client's right to remain in the United States may be more important to the client than any potential jail sentence"

Matthew

Other

• Immigration consequences are **permanent**

Jermaine

• "There is no difference between an act of commission and an act of omission"

<u>What You Should Do</u>: Consult with WDA Immigration Experts

Jonathan

Impact on Family Rights

Impact on Family Rights

Family Court Proceedings

• May impact parental rights and result in termination

Child Support Obligations

Jermaine

• Continue to accrue while incarcerated unless modified

Jonathan

Matthew

Other

Foster parents

Convictions may preclude licensing

ISRB and Community Custody



ISRB and Community Custody

<u>ISRB</u>

• Oversees felonies committed before July 1, 1984 and some sex offenses committed after August 31, 2001

<u>Community Custody</u>

Jermaine

- Length of Time Depends Upon the offense
- Most offenders who pose low or moderate risk to reoffend are not supervised

Matthew

Other

• Some offenders will be supervised regardless or risk level

Jonathan

Registration

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Registration

<u>Duty</u>

• Offenders who are convicted of sex and kidnap offense must register with the county in which they reside

Jonathan

Matthew

Other

Classification

• An offender who is living in the community will be classified based upon their likelihood to reoffend

<u>Felony</u>

• Failure to register is a felony

<u>Discharge</u>

- An offender must remain registered until the duty is discharged
- A felonies: May stop only upon the petition of the superior court
- B felonies: 15 years since the last date of confinement
- C felonies: Ten years since the last date of confinement

Juveniles Court convictions

- 15 year old Class A Felony: At least 60 months have passed
- Under 15: At least 24 months have passed

Jermaine

Competence and Insanity

WESTERN STATE HOSPITAL

ESTABLISHED 1871

Competence and Insanity

<u>Competency</u>

- Where defendant is found incompetent, the court shall order proceedings stayed
- If not restorable, the defendant may be civilly committed, released or held

Forced Medication (Sell Hearings)

Jermaine

• State bears the burden of meeting standard for forced medication by clear, cogent and convincing evidence

<u>Insanity</u>

• At the time of the commission of the offense, as a result of mental disease or defect, the defendant was unable to perceive the nature and quality of the act or unable to tell right from wrong with reference to the particular act charged

Matthew

Other

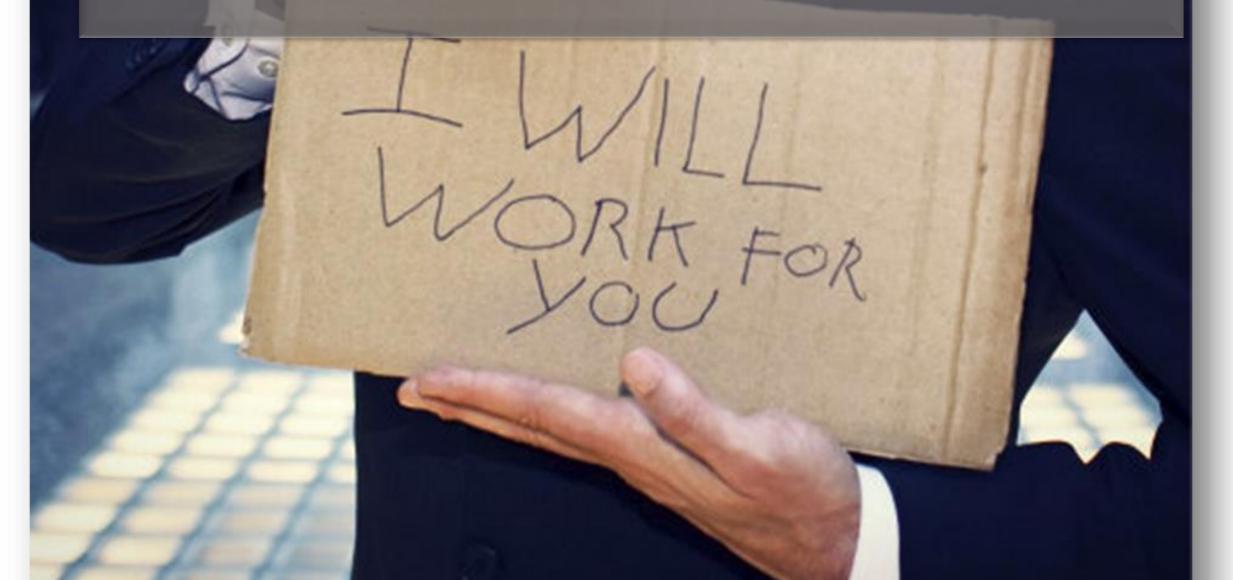
• A defendant found criminally insane may be held up to the maximum penal term

Jonathan

keep it simple.

Talk to Your Client

Work Case According to Your Client's Goals





Use Community Resources

CONSEQUENCES

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