

# The Game of Law

*Economic Class and Access to Justice*

Gus Solomon Inns of Court - November 13, 2018



# Our Game Players



Hunter: (Sales meeting photo)

Status: 30, "Kids", Supermillennial,  
crashes at trust owned condo

Job: Marketing Rep for Nike

Drinks: Pour Over Hemp infused  
Organic **only**



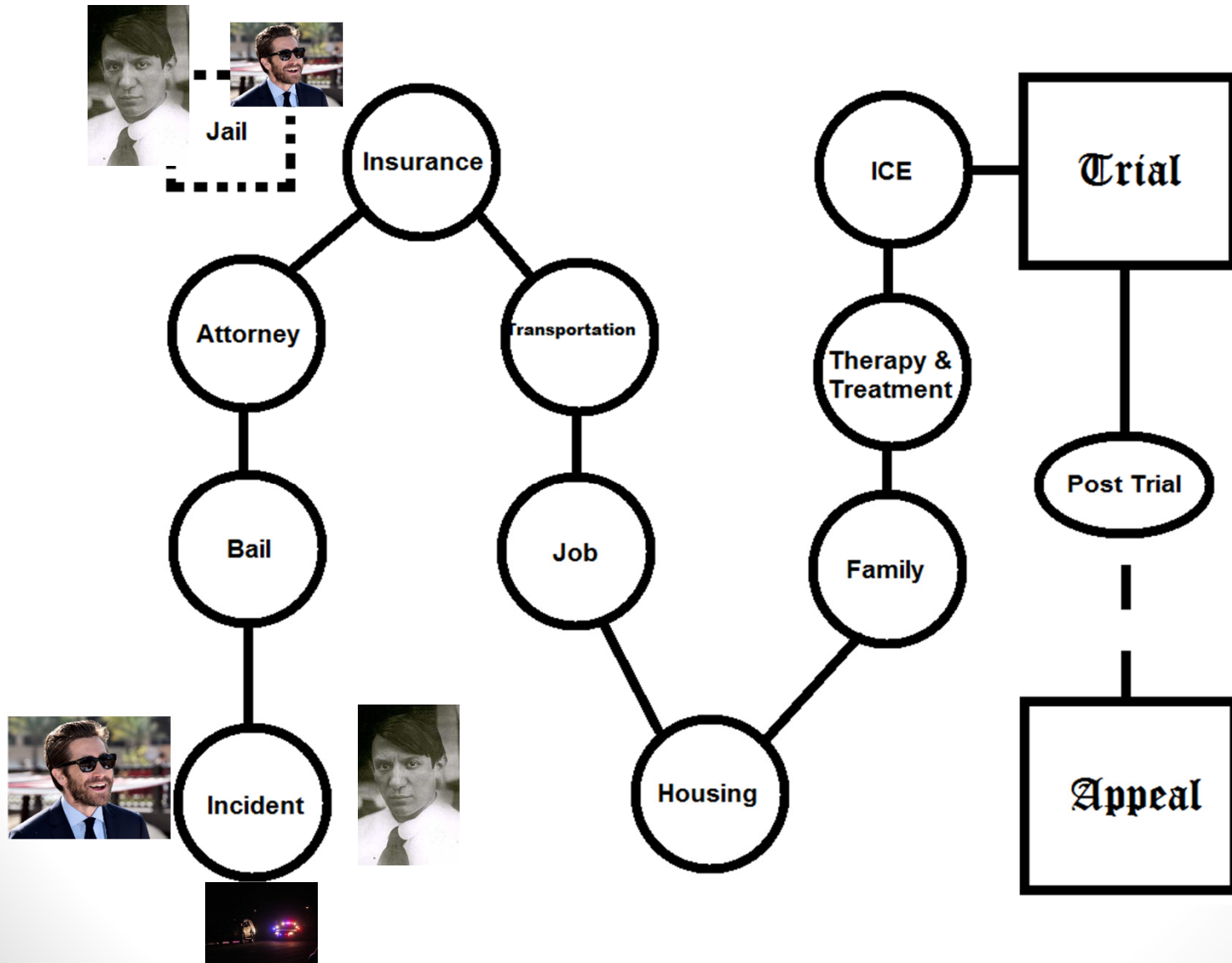
Pablo: (Wedding day photo)

Status: 20's, Married Wife, Two kids,  
rents in Hillsboro.

Job: Painter for Beaverton Company,  
Weekends for Craigslist landscaper

Drinks: McDonalds at 5am

# The Incident



# BAIL



Hunter Life Card

- Phew. Good thing your wealthy parents are so forgiving. You only get one phone call when they bring you into custody, but you know your parents have your back and have the money to support you despite the fact you're a 30 year old man. They agree to wire you the money for bail to keep you out of jail, but be warned that in return, you'll be forced to fly in coach on the family trip to Hawaii.
- **MOVE TO NEXT TABLE**

# BAIL



## Pablo Life Cards

- # 1 - The judge sets bail at \$5,000. You are living paycheck to paycheck and are already behind on rent. You only get one call and you know your kids are waiting for you at their after school program to pick them up, but you also know you can't possibly miss work tomorrow after staying home with your sick daughter two days last week. The kids take priority, so you call a trusted friend to pick them up. Get comfortable for the next few nights and cross your fingers that your boss won't fire you after not showing up tomorrow morning with no notice.
- **Remain at this table for your next turn.**

# BAIL

- The legal purpose of bail is typically to encourage defendants to return to court, but courts often take other factors into consideration:
  - Protecting public safety
  - Encouraging defendants to plead guilty
  - Impose preemptive punishment on defendants they assume to be guilty (based on prior criminal records, for example)
  - Bail affects defendants in different financial situations differently
- 87% of the cases in which defendants arrested had bail set at < \$1,000, the defendants were unable to post bail at their arraignment and were incarcerated pending trial
- § 15.7 days = average number of days spent in jail
- § 71% of them accused of nonviolent, non-weapons related crimes

# BAIL

- Detaining men and women harms them in more ways than one:
  - o Loss of income, and in extreme circumstances, loss of job
  - o Inability to care for children or ailing relatives
  - o Missing school and/or exams
  - o Inability to attend substance abuse and mental health program meetings
  - o Losing beds or spots in homeless shelters
  - o Higher likelihood of accepting a guilty plea without going through trial
- Wealthier defendants who are not forced to stay in jail do not face the same hardships

# BAIL

## Proposed solutions

- o Tailor bail amounts based on the defendant's financial resources, particularly if the stated goal of money bail is to provide a financial incentive for released defendants to attend court proceedings
- California was the first state to eliminate money bail completely in August 2018 (SB 10) due to the inequities it brings. The new law goes into effect October 1, 2019
- o Under new law, a pretrial assessment will be performed to determine a defendant's risk
- o Although a step in the right direction, the ACLU criticizes the new law because "it cannot guarantee a substantial reduction in the number of Californians detained while awaiting trial nor does it sufficiently address racial bias in pretrial decision making."



# ATTORNEY



## Hunter Life Card

- Phew, those wealthy parents come to the rescue again. They have their attorney friend from the country club on speed dial. You have an appointment to meet with him tomorrow morning at 9am and he has already assured your parents that he can waive your appearance at the arraignment date (phew, you don't have to ask Nike for another day off) and that you will definitely get into the Diversion program (another phew). He also promises to go to the DMV hearing and is confident he will win based on the police report (phew, you won't have your license suspended). Move to the next table.
- **MOVE TO NEXT TABLE**

# BAIL



**Pablo Life Cards**

# 2 - Good news. After three nights in custody, your community was able to raise enough money for you to post bail. You know you're either going to be fired from your job when you see your boss or put on probation with no flexibility as to when you take off work. Regardless, you're finally out of jail. You get to move on to the next table.

- **MOVE TO NEXT TABLE**

# Insurance



## Hunter Life Card

- You are now being sued in civil court by the driver of the vehicle you hit while drunk driving. You also have medical bills of your own, and you cannot return to work due to the injuries. Plus, your car was damaged and is not drive able. You need to get your finances straightened out and retain an attorney to defend you before you can move on. Good news. You have excellent auto insurance which provides you with a defense attorney, pays your medical bills, provides you with a rental vehicle while repairs are performed, and covers the majority of your lost wages, even though you caused the accident. You are free to move on.
- **MOVE TO NEXT TABLE**

# Attorney



Pablo Life Cards

- # 1 - You sat in jail for 3 days waiting for your arraignment. You were handed a card at the arraignment by the attorney there - but she tells you "I'm not your attorney, I am just covering the arraignment today." She also tells you "don't call until next week because your attorney won't have your file until then." She also says "and don't be surprised if you don't meet with your attorney before the next court date, which is your Diversion entry date." You leave the courtroom with a card but no other information, and at least 2 future court dates. **Stay at this table and miss a turn.**

# Attorney-

- The costs to hire an attorney can be prohibitive. Per some well-respected DUI attorneys in Portland, a Diversion entry alone can be \$1500 and up. There are likely lawyers who will do the Diversion entry for less, but the higher-cost attorneys will accompany their client to ADES and will provide ADES with the police reports and DMV record (which they order from DMV). The amount you pay for Diversion representation also corresponds into how receptive your attorney will be to problems during the year of Diversion. Some believe their representation ends after Diversion entry while the higher cost attorneys continue their representation until the dismissal is signed, which means they take many calls/emails/texts about problems in treatment, with the IID, and with new police contact. A solid DUI lawyer will also prep the difficult Diversion entry cases (kids in the car, high blow, bad facts, or raging alcoholism / minimizing) by helping the client start outpatient treatment ahead of time. This means the first month of dirty UAs won't be such a problem because client is not yet in Diversion, and it will normalize client to the needs of treatment. It also provides a discretionary reason for a judge to allow Diversion over prosecutor objection under ORS 813.220. **In short: if you pay more for a good lawyer, your odds of successfully making it through Diversion increase substantially because you'll have an accessible lawyer willing to anticipate and promptly respond to problems before they get out of hand (DIVR revocation).**

# Attorney

- DMV hearing (in addition and also alone): Most lawyers separate these fees, and the DMV fee runs from \$300-\$2000. For \$300, the lawyer will put on a suit for an administrative hearing, ask zero questions of the state's star witness against you, and make no closing argument. The higher cost lawyers dress business casual (like the ALJ!) to keep the cop at-ease, and engage in a searching and thorough deposition of the arresting officer and any others who show up. A good lawyer will also use the DMV Hearing, when necessary, to build rapport with a cop and get their position on settlement of the criminal case -- this is very important in veteran cases, where the DA is required by statute to consider law enforcement opinion. Finally, a good lawyer will understand the issues at DMV that lead to disaffirmance of the suspension, will cultivate the record on those grounds, and will bring those issues up respectfully and forcefully in closing argument. A good lawyer will also be prepared to appeal to Circuit Court, will know how to brief those appeals and argue them.

# Attorney

- Jury trial: Anywhere from \$2,000-\$15,000. The top there is John Henry Hingson range, and he's very good. Watching him try a case (or any portion: opening, cross, close, jury selection) is amazing. The lower range is a newer attorney who wants trial experience but may be very good. The higher range includes both great attorneys, and lawyers who simply don't want to go to trial ever so charge a premium for it (and won't be very good at it). It is highly unusual for a private bar DUI attorney to recommend that a client waive jury.

# Attorney

- Does this change if it's a DRE? Not for me. DRE is no big deal. If you're a private bar DUI attorney, you know DRE defense like the back of your hand. It doesn't take long to get up to speed on any particular drug or drug category. If the private bar attorney is a generalist, then they might charge more -- but they shouldn't. They shouldn't charge a client for them to learn the law.



# Attorney

- And what one usually will spend on an expert for trial? Experts are anywhere from \$600-\$5,000 for trial, depending on whether they're accident reconstructionists, forensic scientists, biomechanical medicine folks, etc. I rarely use experts. Usually the state will bring their own if it's an expert case, and on cross-exam I'll get virtually everything my expert would have given me. The exception is manslaughter/assault DUI cases, then you'll need to be visiting the scene multiple times with your crash reconstructionist and others, get a report, and that can get spendy. And of course a forensic scientist can be helpful to have on your witness list in some cases.

# Attorney

- The cost of a public defender – an attorney in the misdemeanor unit who usually has upwards of 150 open cases at any given time – is more reasonable (but still sometimes too much). A defendant in custody is automatically appointed a public defender at the first arraignment date. If he stays in custody for the whole case, the public defender will stay on for the entire time, with a judge assessing “attorney fee” at the conclusion of the case. If the defendant is released, however, he may have to pay money to keep the public defender. And a defendant who appears out-of-custody for his arraignment must fill out an “affidavit of assets and liabilities” and then have a county employee and the judge assess the cost of the public defender. There is a fee to apply, but that can be waived.

# Transportation



Hunter Life Card

- You have a meeting with your attorney downtown, about a 15 minute drive or 1 hour bus ride (which includes a transfer) from your house. You decide to drive your rental car rather than taking the bus, because why waste an extra 45 minutes? Also, it is expensive to park in a garage downtown, but luckily, the attorney you hired will validate for parking, so no cost to you! **Move to the next station.**

# Attorney

Pablo Life Cards



- # 2 - It's a month later and you finally meet your attorney at the Diversion entry date. She is very busy and has a few other clients there but you do feel comfortable with her. You and she decide - for reasons we can't tell you right now - that you are turning down Diversion. She gives you your next court date.
- **Move to the next table.**

# Job / Employment



## Hunter Life Card

- You work in a cushy position at Nike that your college buddy helped you get without even an interview. You are bros with your boss ever since you took him golfing at your dad's country club (and let him win, of course). You ask for the day off and he grants it to you no questions asked.
- **Move ahead to the next table.**

# Insurance

- .

## Pablo Life Cards



- You are now being sued in civil court by the driver of the vehicle you hit while drunk driving. You also have medical bills of your own, and you cannot return to work due to the injuries. Plus, your car was damaged and is not drive able. You need to get your finances straightened out and retain an attorney to defend you before you can move on.
- You do not have auto insurance or medical insurance. You will need to come up with money to hire an attorney and cover your other costs. You will also need to come up with alternative transportation for any appointments or court dates you need to attend. Lose one turn.
- **Stay at this table and miss a turn.**

# INSURANCE

## CAN YOU AFFORD AUTO INSURANCE?

- + Auto insurance rates tend to be higher in poorer neighborhoods due to a higher rate of property crimes.
- + It appears that only California, Hawaii and New Jersey have programs to help low-income individuals and families obtain low-cost auto insurance.
- + Homeowner's and Renter's policies typically include liability coverage (although not for auto accidents)

# INSURANCE

- AUTO INSURANCE COVERAGES

Coverage Minimum Good coverage

Liability 25K/50K 500K/1M

PIP 15K 100K

UIM 25K/50K 500K/1M

Comprehensive N/A 100%

Rental Reimb. N/A 100%



# INSURANCE

## WHAT IS PIP COVERAGE?

- + No fault medical payments: \$15,000 minimum
- + Lost wages if disabled at least 14 days: pays 70% of income, up to \$3,000 / month for one year.
- + Household services: Reimburses for household services if insured not employed and hires someone else for household services normally self-performed.
- + Funeral costs: up to \$5,000.
- + Child care: \$25 / day, up to a maximum of \$750.

See ORS 742.524

# INSURANCE

## LIABILITY INSURANCE

- + Oregon's pay-to-play statute: ORS 31.715
- + Limit increases are relatively inexpensive.
- + Homeowner's and Renter's policies typically include liability coverage (although not for auto accidents)

# Housing



## Hunter Life Card

- Hunter has been busy attending musical festivals up and down the west coast all summer and into the fall. He got behind in the rent on his apartment off Mississippi Ave. He isn't always in town when the trust fund checks come in the mail. So, there are delays in depositing checks in the bank. Hunter is extremely irritated that there is no app for taking live checks and physically transporting them to the bank for deposit. Hunter receives a written notice from the landlord that he had to either pay the rent within 72 hours or move out. But he just doesn't have a chance to pay before the next festival. When he gets back to town, he gets served with residential eviction papers. He looks at the summons and sees that the first appearance in the eviction case is set for the morning of the DUI trial (this is before he decides to do diversion). He calls the trustee of his trust fund, who is an officer at a bank and connects Hunter with a LL-T attorney. Hunter hires the LL-T attorney, who goes to the first appearance. There are some minor habitability issues with the apartment—the kitchen sink had a slow leak, and the front door didn't always lock right. Hunter's lawyer is able to negotiate a large offset on the past due rent due to these habitability issues. Hunter pays LL and the FED case is dismissed.
- **Move ahead to the next table.**
- .

# Insurance

- .

## Pablo Life Cards



- You scraped together enough money from friends and family to hire a cut-rate attorney to assist with your defense. You also negotiated a payment plan for your medical bills. It is going to be difficult to keep up with the payment plan given your lack of income, but you are free to move on for now.
- **Move to the Next Turn**

# Family



## Hunter Life Card

- After his legal trouble, a nosy teacher at his son's preparatory school calls DHS on Hunter. Hunter calls his country club attorney friend and asks how he can best position himself to get DHS out of his hair sooner rather than later. Upon the lawyer's free advice, Hunter pays to enroll himself in a "parenting after arrest" class and takes time from work to attend and complete the class before DHS has a chance to connect with him to investigate. DHS visits Hunter in his picture perfect home, and the teacher's accusations of neglect are promptly determined to be unfounded.
- You do not have any childcare concerns in view of your support system of friends and family.
- **Move on to the Next Table.**

# Transportation



## Pablo Life Cards

- # 1 - You borrowed a car from your friend so that you can attend your court appearance downtown. However, you just received a notice in the mail that your driver's license was suspended because you failed to attend your DMV hearing because you could not miss a day of work. You don't want to break the law and drive with a suspended license, so you take the bus. Unfortunately, the bus is running behind schedule, so you miss your court appearance. **Skip a turn.**

# Transportation

**“[D]riving an automobile is a virtual necessity for most Americans.”**

*Wooley v. Maynard* , 430 U.S. 705, 715, 97 S.Ct. 1428, 51 L.Ed.2d 752  
(1977)

- Having a car is key to obtaining and maintaining employment
  - Approx 82% of Oregonians commute by car
  - Car ownership has a racial dimension: Nearly 20 percent of black households do not have a car, in comparison to 4.6 percent of white households
- Public transportation can unreliable, expensive, or completely unavailable (“transit deserts”)
  - In 32 of Oregon’s 34 counties, at least 40% of residents do not live within a .25-mile radius of a stop operated by any transit agency
  - Tri-Met instituted “Honored Citizen Fare” in 2017 for individuals who earn up to 200 percent of the federal poverty level

# Transportation

2015 study: Miriam Northcutt Bohmert, *Access to Transportation and Outcomes for Women on Probation and Parole*, February 2015, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/248641.pdf>

Key finding: ***relationship between “transportation deprivation” and recidivism is “moderately strong” in women on probation and parole***

Women reported the following transportation problems:

- Difficulty arranging rides (56% of women)
- Experiencing legal problems with being able to drive and related costs of driving (33.3%)
- Having car problems (32%)
- Bus service is inadequate (22.7%)
- Has help but from unreliable people (22.7%)
- Direct costs of transportation are prohibitive (20%)
- Safety concerns (12%)
- Not having people to provide transportation help (8%)
- Experiencing weather issues (4%)
- Having health problems that impede travel (8%).



# Transportation

## Driver's License Suspension for Failure to Pay Court Debt

Forty-three states and the District of Columbia use driver's license suspension to enforce court debt

- Most do not allow for consideration of an individual's ability to pay
- CA ended practice in 2017 – Assembly Bill 103
- TN federal judge held TN's statute to be unconstitutional in July 2018 in *Thomas v. Haslam*, 303 F.Supp.3d 585, 615 (M.D. Tenn., 2018)

O.R.S. § 809.210 – allows a court to issue a notice of suspension to DMV if fines are unpaid for more than 30 days

- OR Law Center filed class action in September in federal court seeking to invalidate statute - *Mendoza v. Garrett*, Case No. 3:18-cv-01634-HZ (D. Or. 2018)

Additional Resource: Mario Salas and Angela Ciolfi, *Driven By Dollars: A State-By-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt* (2017), available at <https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf>

# Transportation



## Pablo Life Cards

- # 2 -Your Legal Aid attorney has arranged for a new court appearance for you. Although the courthouse is only about 8 miles from your house, you have to take two buses to get there, and you have to miss (yet another) afternoon of work to allow for the 3 hour round trip. Thankfully, the bus was running on time, so you made it to court on time. **Move to the next station.**

# Job / Employment



## **Pablo Life Card**

Since you have already missed several days of work recently, your boss denies your request for the day off. You do not have any more protected leave, and if you miss another day of work you will be fired. You have to stay up late calling and texting your co-workers to find someone to cover your shift. Finally, the day before another co-worker agrees to cover your shift, but knows you are desperate and in exchange you have to pay him \$50. It's money you will have to scrape to come up with, and you can't do your normal odd jobs on the weekends with your license suspended, but you still have your day job.

**Move ahead to the next table.**

# Jobs / Employment

- CRIME VICTIMS LEAVE; ORS 659A.190-198

Grants certain crime victims and immediate family members the right to protected leave from work to attend criminal proceedings.

“Crime victim” means a person who suffered financial, social, psychological, or physical harm as a result of a person felony.

Applies to organizations that employ six or more persons in Oregon for 20 or more weeks in the calendar year in which the employee takes leave or in the immediately preceding year.

To be eligible employee must have worked an average of more than 25 hours per week for at least 180 days immediately before leave begins.

Undue hardship exception, but discharge, threats, intimidation, and coercion constitute unlawful employment practice.

# Jobs / Employment

- PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE; ORS 659A.280-290

All employers are required to provide a reasonable safety accommodation to eligible employees (no minimum time/dates of employment).

Employers with six or more employees are also required to allow an eligible employee to take reasonable leave to:

Seek legal or law enforcement assistance  
Seek medical treatment or recover from injuries  
To obtain counseling  
To obtain services from a victim services provider  
To relocate or secure an existing home

Reasonable safety accommodations include transfer, reassignment, modified schedule, unpaid leave, change of work number.

# Housing



## Pablo Life Cards

- #1 - He lives in a two bedroom one bath house in Hillsboro with three children. Pablo gets a 72 hour notice to pay the past due rent or move out. He can't afford to pay the rent. A week later he is served with residential eviction papers. The day before his DUII trial, he looks at the summons and notices the first appearance in the eviction case is on the morning of the DUII trial. He panics because he can't be in two places at the same time. He figures he is better off going to the DUII trial because he doesn't want to go to jail. Pablo doesn't show at the first appearance at the eviction case. LL gets an order giving him possession of the property. The court enters judgment for past due rent, plus LL's costs and attorney fees. The roof in the house leaks, so Pablo couldn't use one of the bedrooms and the living room carpet was always damp and moldy. B/c he was a no show at the first appearance, didn't get an offset for LL's habitability violations. Pablo has nowhere to go. Sheriff's department executes on court order of eviction, and physically removes Pablo and his family from the premises.
- **DO NOT ADVANCE**

# Housing

- LANDLORD TENANT LAW HIGHLIGHTS

Termination of rental agreement for failure to pay rent, 72 hour notice required. ORS 90.394.

Action to recover possession of premises. ORS 105.105 et seq.

If the landlord appears and the tenant fails to appear, a default judgment shall be entered in favor of the landlord for possession of the premises. ORS 105.137.

Landlord to maintain premises in habitable condition. ORS 90.320.

Tenant may recover damages for any noncompliance by the landlord with the rental agreement or ORS 90.320. ORS 90.360.

In an action on a rental agreement, reasonable attorney fees at trial and on appeal may be awarded to the prevailing party together with costs and necessary disbursements. ORS 90.255.

# Housing

## EVALUATING A PROSPECTIVE TENANT

When evaluating an applicant, the landlord may consider criminal convictions and pending charges for conduct that is:

- A drug-related crime;
- A person crime;
- A sex offense;
- A crime involving financial fraud, including identity theft and forgery; or
- “[O]f a nature that would adversely affect property of the landlord or a tenant; or the health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord’s agent.”

ORS 90.303.



# Housing

## Pablo Life Cards



- Pablo takes out a pay-day loan so he can come up with first month, last month and security deposit to move into a new place. He has the LL's judgment hanging over his head and doesn't know how he'll ever get enough money together to pay it.
- ADVANCE TO NEXT TABLE

# Family



## Pablo Life Cards

- After Pablo's three days in jail, he learns that on one of these days, his wife had to leave their two-year old daughter with a nine-year old neighbor while she went to work, because the aunt their daughter usually stayed with had to care for her elderly mother. A neighbor called DHS about this arrangement, and DHS initiated an investigation of Pablo and his wife. Pablo can't afford yet another lawyer to represent him during this invasive and scary DHS investigation, so he hopes for the best. Pablo has to leave work early to get home for a home interview with the DHS worker.
- **Move on the Next Table**

# Family

- 1. Without significant financial resources, family law litigants often can't afford attorneys or can't afford experienced attorneys.
- Experienced attorneys at St. Andrew's Legal Clinic and Legal Aid, for example, but there are often waiting lists, and conflicts of interest more frequent, as resources are few in number.
- OSB Modest Means Program is helpful, but attorneys often less experienced.
- Generally speaking, the more experienced the attorney, the higher the hourly rate.
- Unfortunately, cost is often uncontrolled and dependent on the behavior of the opposing party.
-

# Family (Cont.)

If a litigant has a tough time gathering the financial resources to hire a family law attorney, it's likely the litigant's financial situation will also limit access to custody evaluators, experts, children's lawyers, etc.

- Appraisers for real property, business valuation, experts of any type – all require funds in addition to attorney fees.
- Without access to the above, parties work with less reliable information by necessity.
- Litigants who have to be cost-conscious are also less likely to be able to give their lawyers freedom to take the extra step.

# Family (Cont.)

Mediation is mandatory in Portland metro area counties, before parties can proceed to dissolution litigation, but mediation is not always available free of cost.

- In Multnomah County, children must be involved to qualify the matter for free mediation services.
- If the parties so qualify, the mediators are not attorneys or retired judges.
- Parties that have the resources to pay for private mediation get more time and attention for pre-trial problem-solving . . . and mediators who are more experienced.
- Multnomah County Circuit Court does offer low cost judicial settlement conferences, but again the resources is not unlimited, and waitlists might exist. Time slots allotted to each conference are also limited in time.

# Family (Cont)

People without significant financial resources and access to technology may not be aware of court services/pro bono or low bono options for unrepresented parties.

- Regardless of the kind folks who – via various non-profit initiatives, court websites etc. – work to make resources readily available for self-represented parties, family law is not intuitive and can be difficult to navigate.
- To get help, you have to know where to look for help.
- And to utilize help available at the courthouse, you have to be able to get to the courthouse during business hours.

# Family (Cont)

Avoidance of the system. People without financial resources – many of whom have historically been oppressed by the system – may be less likely to use it.

- Fear that family court involvement leads to DHS/immigration/law enforcement involvement.







# Family (Cont)

California has Government Code 26826.3 makes it a *policy* of the state to *endeavor* to provide a children's waiting room in each courthouse. Adds a surcharge of \$2-\$5 on certain pleadings to help fund the program.

New York commission study on courthouse child care

Colorado "Family-Friendly Courts Act in 2005"

West Virginia pilot program

# Family (Cont)

## **“Best of the Rest”**

Washington DC

Florida: Miami-Dade and Orlando

Illinois: Cook, Lake and Kane

Indiana: Lake County

Maryland: Annapolis

Massachusetts: Boston and Fall River

Minnesota: Minneapolis for jurors only, not litigants

New Jersey: Passaic County

Pennsylvania: Pittsburgh and Montgomery County

Washington: Seattle, Kent Spokane

# Therapy and Treatment



## Hunter Life Card

- Hunter is sentenced on his DUI in accordance with the statute. He takes some time on the weekends to knock out his 80 hours of community service. He quickly pays off his DUI fees and attends the Victim Impact Panel. After going to his evaluation with ADES the evaluator sees that Hunter is a casual user and is referred to a DUI Information Program. He completes a four week program and does not need to receive treatment. Hunter can move on to the next stage in the process.



## Pablo Life Cards

- Pablo's Card #1 - Pablo is sentenced on his DUI in accordance with the statute. Pablo finds that it would be very difficult to do Community Service and instead opts for a quick two day sentence. He structures his payment plan over time. After going to his evaluation with ADES the evaluator sees that Pablo shows a pattern of alcohol use, has a prior PCS Marijuana charge, and others are concerned that he drinks too often. Pablo is referred to an Alcohol Abuse Outpatient program. Work keeps him from a UA and he is stalled at probation. Lose a turn so that Pablo can complete a 90 day clean UA period.
- Pablo's Card #2 - Pablo, after a few hiccups has completed his Outpatient program. He has had to miss some work to go in for UAs and he has had several status checks with this judge on Enhanced Bench Probation. Pablo may move forward to the next stage in the process.

# ICE



Hunter Life Card

- Congratulations, Hunter, you are a citizen so you get to skip this table and move on. You benefit from "birth right citizenship" and citizenship through descent through your parents. Why don't you spend this time taking a quick trip to Paris (aka go and grab another drink!) and then take your Parisienne wine to the next table.

# ICE



## Pablo Life Cards

- # 1 - Pablo, you are undocumented because your DACA status expired and the current administration chose to get rid of the protections DACA afforded to millions of youth. The current administration has also decided that your arrest for DUI is sufficient to have you deemed a credible threat. You will face immediate deportation to Mexico, a country you do not know. You are arrested at the courthouse as you try to appear for your court case. Your children do not know where you are and are taken into foster care. You do not have a constitutional right to a public defender in immigration court so you face the judge yourself and receive your deportation notice. You do not have sufficient funds to post the bail (you must post 100% of the bail in immigration court). You fail to appear at any of your future DUI court cases and get a one-way ticket to Mexico.
- **Skip a Turn**

# Trial



## Hunter Life Card

- Hunter doesn't have to through a scary trial - he meets his buddies at the Lucky Lab and high-fives them all.

# ICE

## Pablo Life Cards



- The midterm elections of Nov. 6 were surprisingly blue and all of a sudden, the scary immigration doctrines of the last 18 months were reversed. You are unexpectedly released from detention just before boarding your plane to Mexico. Nobody explains anything to you, but you do now have a Multnomah County warrant for missing court on your DUI case, so you head back to jail to await a release hearing. Miss another turn.

# Sentencing



**Hunter Life Card**

- Hunter is sentenced on his DUI in accordance with the statute. He takes some time on the weekends to knock out his 80 hours of community service. He quickly pays off his DUI fees and attends the Victim Impact Panel. After going to his evaluation with ADES the evaluator sees that Hunter is a casual user and is referred to a DUI Information Program. He completes a four week program and does not need to receive treatment. Hunter can move on to the next stage in the process.



# Trial

## Pablo Life Cards



- Pablo's appointed counsel has difficulty finding the right file and puts on the best defense for his third case out of law school. The appointed counsel closes with an argument that the judge expressly said could not be made. Mistrial. Lose a turn and stay in detention.

# Trial

## Pablo Life Cards



- Pablo, has an unsympathetic jury who convicts him in 15 minutes of deliberations.

# Hunter's Done



**BRO - LET'S GO GET A BREW!**

# Sentencing

## Pablo Life Cards



- Pablo is sentenced on his DUI in accordance with the statute. Pablo finds that it would be very difficult to do Community Service and instead opts for a quick two day sentence. He structures his payment plan over time. After going to his evaluation with ADES the evaluator sees that Pablo shows a pattern of alcohol use, has a prior PCS Marijuana charge, and others are concerned that he drinks too often. Pablo is referred to an Alcohol Abuse Outpatient program. Work keeps him from a UA and he is stalled at probation. Lose a turn so that Pablo can complete a 90 day clean UA period

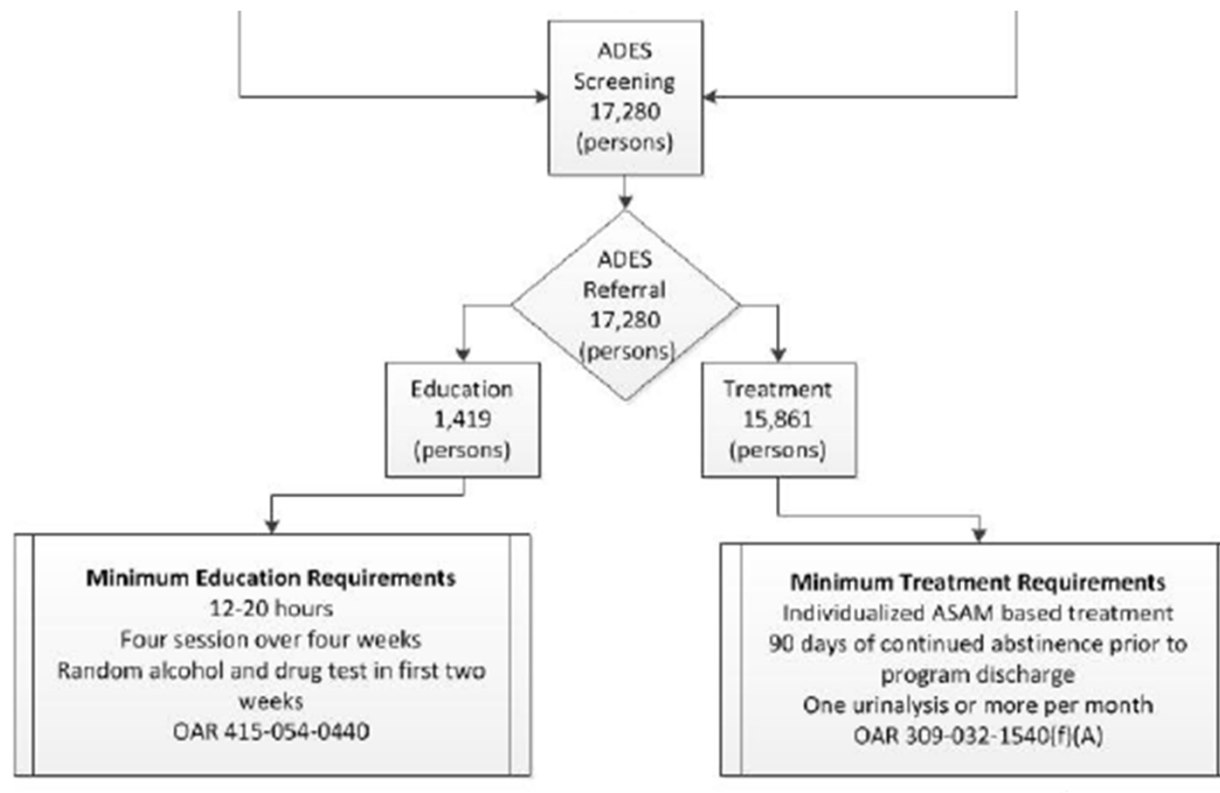
- What's the Sentence?
  - • Enhanced Bench Probation (2 years)
  - • \$1,000 fine or \$2,000 if BAC  $\geq$  .15% (ORS 813.010(6))
  - • \$255 DUI Conviction Fee, Attorney Fees, \$100 Bench Probation Fee
  - • 80 hours Community Service Work or 48 hours jail (without programs)
  - • Victim Impact Panel (VIP)
  - • 1-year ODL suspension (ORS 813.400 and ORS 809.428)
  - • Alcohol and/or drug evaluation/treatment/package



# Referrals and Evaluation

- BAC over .15
  - Self-admission of problems involving alcohol and/or other drugs
  - Previous alcohol and/or other drug arrest
  - Prior diagnosis or treatment for alcohol and/or other drugs
  - Personality changes
  - Passed out on more than one occasion
  - Regular pattern of use
  - Concern of others regarding alcohol and/or other drug use
  - Symptoms of withdrawal
  - Blackout on more than one occasion
  - Unsuccessful attempts to quit or cut back
  - Alcohol and/or other drug related problems, such as health, including cirrhosis or fatty liver, psychological, social, employment/school, and family
- ▶ Barriers to Successful Treatment
    - ▶ A. Not fluent in English
    - ▶ B. Housing instability
    - ▶ C. Employment instability
    - ▶ D. Income instability
    - ▶ E. Transportation issues
    - ▶ F. Health issues
    - ▶ G. Mental health issues
    - ▶ H. Recent hospitalizations
    - ▶ I. Lack of family support

# Why does this matter?



# Sentencing



## **Pablo Life Cards**

- Pablo, after a few hiccups has completed his Outpatient program. He has had to miss some work to go in for UAs and he has had several status checks with this judge on Enhanced Bench Probation. Pablo may move forward to the next stage in the process.



THANK YOU