



A Juvenile Defender's Guide To

CONQUERING COLLATERAL CONSEQUENCES

INVOLVEMENT WITH THE DELINQUENCY SYSTEM —

Including arrests, dismissed petitions, and adjudications — can create long-term barriers to a young person's employment, housing, and educational opportunities. Juvenile defenders can break down these barriers by discussing these consequences with their clients, mitigating potential harms, and building pathways to success. Understanding collateral consequences is critical to every plea or diversion negotiation, could impact the theory of defense at all levels of a case, and will inform disposition, post-disposition, and reentry advocacy. Because collateral consequences vary by state, it is important to stay abreast of the specific barriers created by juvenile court involvement where you practice.

PUBLIC ACCESS TO JUVENILE RECORDS



Most states allow public access to at least some records, and may accidentally disclose confidential information and/or share otherwise confidential information with the FBI. This information can then show up on background checks run by employers, landlords, or colleges.

- Research what records are available to the public or shared with the FBI in your state.
- Consider negotiating charges and/ or pleas to offenses that do not trigger public access and that allow for record clearance.
- Educate clients on the process of getting their records cleared and the importance of record clearing, and ensure they have legal assistance to do so.

LOCAL PUBLIC EDUCATION



Students may be suspended or expelled from school based on alleged in- or out-of-school conduct, and may have trouble reenrolling in school or transferring credits when returning from an out-of-home placement.

- Connect clients to an education advocate and/or represent clients at school discipline hearings whenever possible.
- Obtain education records from an out-of-home placement to assist clients when returning to their local school.
- Remind clients that anything they say at a school discipline hearing may be used against them in court.
- Submit a public records request for the state's or school district's general reentry plan (required under federal law – *Every Student Succeeds Act*) to ensure the school at least complies with that plan.

HIGHER EDUCATION



Some college applications ask about school discipline, juvenile adjudications, convictions, and crimes. Juvenile adjudications will not disqualify an applicant from receiving federal student loans.

- Reassure your clients that they can be accepted into college even with a juvenile record.
- Assist clients with record clearance, which may remove the requirement to disclose and prevent the information appearing on a background check.
- Counsel clients on how to answer questions about convictions (underscoring that an adjudication is NOT a conviction in most states) and talk about their juvenile records or incidents involving school discipline if they are required to do so on college applications (such as the Common App) or in interviews.

DRIVER'S LICENSES



Most states allow judges to suspend a young person's driver's license as part of their disposition.

- Determine the impact of juvenile adjudications on driving privileges, and advise clients accordingly.
- Consider negotiating charges and/or pleas to offenses that do not trigger driver's license restrictions.
- Assist clients in requesting early reinstatement or connect clients with an advocate who can assist in license reinstatement.

PUBLIC BENEFITS



If a young person is placed in a secure facility, their family may no longer receive Supplemental Security Income (SSI), food stamps, Temporary Assistance to Needy Families (TANF), or Medicare assistance for that child – assistance that will need to be reinstated upon the youth's release.

- Advise clients and their families about the potential suspension or termination of these benefits while a youth is placed in a secure facility.
- Assist clients and their families with reinstatement of public benefits upon release or connect clients with a civil legal aid attorney who can assist in benefits reinstatement.

HOUSING



The U.S. Department of Housing and Urban Development (HUD) *requires* local public housing authorities (LPHAs) to ban for life those adjudicated for making methamphetamines on public housing property or for an offense that leads to lifelong sex offender registration. HUD *allows* LPHAs to exclude individuals for “criminal activity” that includes drugs or violence, even if the activity did not take place on public housing property. Rental applications for private housing may also ask about arrests, charges, convictions, probation, or diversion programs. Many LPHAs and private landlords run commercial background checks on potential tenants.

- Advise clients on whether their charges or adjudications may affect their – and their families’ – ability to reside in public housing or receive federal housing vouchers.
- Assist clients with record clearance, which may remove the requirement to disclose and prevent the information appearing on a background check.
- Counsel clients on how to answer questions about arrests and convictions and talk about their juvenile court involvement if they are required to do so on housing applications or in interviews.
- Connect clients with a civil legal aid attorney who specializes in housing.

EMPLOYMENT



Many employment applications ask about convictions, and most employers require background checks. Otherwise confidential juvenile records may appear on FBI background checks – which are often required for jobs related to working with children and vulnerable adults, law enforcement, security, the federal government, or the military.

- Counsel clients on how to answer questions about convictions and talk about their juvenile adjudications if they are required to do so on job applications or in interviews.
- Advise clients on whether their juvenile record may appear on a background check.
- Assist clients with record clearance, which may remove the requirement to disclose and prevent the information appearing on a background check.

MILITARY SERVICE



The U.S. Military requires applicants to disclose juvenile adjudications, even if the record has been cleared, and often want to see records from the case. Generally, felony, drug, domestic violence, and sex-related offenses will preclude military service. However, each branch of the military has discretion to make exceptions for applicants through a waiver process.

- Counsel clients on how to talk about juvenile records.
- Consider negotiating charges and/ or pleas to offenses that do not trigger restrictions on military enlistment.
- Assist clients with record clearance, which may provide mitigation.
- Before clearing clients’ records, obtain and retain copies of the charging documents, police records, and certified copies of all court orders, if the recruiter requires them.
- Contact a local recruiter for details about specific adjudications and requirements for waivers.

ADULT SENTENCING



Juvenile adjudications are often available for judges to consider in detention, disposition, and sentencing hearings if youth face future juvenile or criminal matters.

- Determine the impact of adjudications in future cases, and advise clients accordingly.
- Assist clients with record clearance, which may prevent access in potential future cases.
- Consider negotiating charges and/or pleas to offenses that do not trigger future sentencing consideration or enhancements.

IMMIGRATION



A juvenile arrest, charge, or adjudication may trigger immigration consequences. Immigration consequences of juvenile court involvement differ from the consequences of adult criminal court involvement.

- Consult an immigration attorney to determine when your clients may be at risk of immigration consequences and/ or is potentially eligible for immigration relief.
- For detailed guidance on immigration issues in juvenile proceedings, please visit: www.njdc.info/wp-content/uploads/2017/12/Immigration-Brief_Final.pdf

FIREARM POSSESSION



Some states limit a youth's right to possess a firearm based on a juvenile adjudication. Being able to lawfully possess a firearm may increase the young person's employment options.

- Consider negotiating charges and/ or pleas to offenses that do not trigger firearm restrictions.
- Assist clients in requesting early reinstatement.
- Advise clients about any limitations on their ability to lawfully possess a firearm, and any options they have for reinstatement.

SEX OFFENDER REGISTRATION



Many states require young people with adjudications for sex offenses to register as a sex offender, which limits the young person's housing, work, education, and ability to travel.

- Assist clients with record clearance and deregistration.
- Advise clients about moving to or visiting other jurisdictions or states that may trigger other registration requirements.
- Counsel clients on registration requirements and consequences for noncompliance.
- Consider negotiating charges and/ or pleas to offenses that do not trigger registration.

FINES, FEES, AND RESTITUTION



Many juvenile courts impose fines, fees, and/or restitution on youth following juvenile court involvement, and nonpayment can trigger serious consequences for probation, record clearance, and their credit.

- Challenge the court's enforcement of fees, fines, or restitution based on clients' inability to pay.
- Advise clients about the potential consequences of nonpayment.
- File motions to modify fees, fines, and restitution based on clients' inability to pay.
- Consider negotiating charges and/or pleas to offenses that do not trigger fees, fines, or restitution.

For further resources on collateral consequences of juvenile court involvement, please visit: www.njdc.info/collateral-consequences.

