

BEYOND JUVENILE COURT: LONG-TERM IMPACT OF A JUVENILE RECORD

**What Defense Attorneys
Need to Know About
Collateral and Other
Non-confinement Consequences
of Juvenile Adjudications**

Washington Defender Association

**810 Third Avenue
Suite 201
Seattle, Washington
98104**

(206) 623-4321

**www.defensenet.org
WDA@defensenet.org**



Acknowledgements

Beyond Juvenile Court: Long-Term Impacts of a Juvenile Record was written by Kim Ambrose, WDA resource attorney, with Alison Millikan. Stacy Chen and Christie Hedman, director of WDA, edited the manual, and Sarah Yatsko formatted and supervised its production.

The following persons contributed in the compilation of this booklet and deserve recognition:

Hong Tran, *Staff Attorney*, Northwest Justice Project

Ann Benson, *Director*, WDA Immigration Project

Jonathan Moore, *Immigration Resource Specialist*, WDA Immigration Project

Mark Dalton, *Administrator*, Department of Social and Health Services

Notes:

Table of Contents:

I.	Is a Juvenile Adjudication a "Conviction"?	5
II.	Juvenile Criminal History Records	6
III.	Immigration	10
IV.	Financial Obligations	12
V.	Driving	14
VI.	School Issues	17
VII.	Applying to College	19
VIII.	Federal Student Loans	20
IX.	Right to Possess Firearms	21
X.	Voting and Jury Service	23
XI.	Military Service	24
XII.	Employment	25
XIII.	Housing	28
XIV.	Public Benefits	31
XV.	Traveling to Canada	32
XVI.	Juvenile Sex Offenses	33
XVII.	Foster Children	37
XVIII.	Parental Responsibility	39
XIX.	Endnotes	40

Beyond Juvenile Court: What Defense Attorneys Need to Know about Collateral and Other Non-confinement Consequences of Juvenile Adjudications

I don't know why I did it, I don't know why I enjoyed it, and I don't know why I'll do it again.

-- Bart Simpson, from *The Simpsons*

Who should use this Booklet?

The information in this booklet is intended for use by public defense attorneys, their juvenile clients, and their clients' parents in Washington State. It is not comprehensive. It is meant as a starting point for defenders and juveniles to understand the hidden penalties that may occur after juvenile court adjudications and can follow juveniles into adulthood. Juvenile respondents and their parents should understand the potential civil and other consequences of an adjudication and always should consult with an attorney before they plead guilty in juvenile court.

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-incarcerative penalties which follow juveniles with criminal adjudications or 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.

204. RCW 4.24.550(5) (2005).
205. Whereas Washington is one of the more liberal states regarding displaying juvenile photos, federal law prohibits pictures and names from being given to the public unless the juvenile is prosecuted as if an adult 18 U.S.C. § 5038(e) (2005).
206. <http://www.waspc.org/>.
207. RCW 13.40.160; RCW 13.40.215 (2005).
208. RCW 13.04.155 (2005).
209. *Id.*
210. RCW 9A.44.130 (2005).
211. SB 2101 amending RCW 9A.44.130.
212. *Id.*
213. RCW 74.13.075 (2005).
214. RCW 4.24.230(2) (2005).
215. *State v. T.A.D.*, 122 Wash. App. 290, 95 P.3d 775 (Div.1 2004).
216. RCW 4.24.190 (2005).
217. RCW 13.40.145 (2005).
218. RCW 13.40.220 (2005).
219. RCW 13.40.085 (2005).

177. 42 U.S.C. § 13662 (2005).
178. 42 U.S.C. § 1437f(d)(1)(B)(v) (2005).
179. 42 U.S.C. § 608(a)(1). A “dependant child” is someone under 18 (unless a court order for support exists), not married, self supporting or a member of the armed forces. RCW 74.20A.
180. 21 U.S.C. § 862a. See WAC 388-408-0015 (2005) for who is eligible in a household to receive TANF in Washington.
181. 21 USC §862(b), 21 USC §862(d)(1).
182. E2SSB 5213, passed by the 2005 Washington legislature, effective 9/1/05, amended RCW 74.08.025(4) by restoring drug felons’ rights to cash assistance under TANF.
183. ESB 6411, passed by the 2004 Washington legislature, effective 6/10/04, amended RCW 74.08.025 by restoring felons’ rights to food assistance.
184. RCW 74.08.025 (2005).
185. WAC 388-454-0015 (2005).
186. WAC 388-418-0007(6) (2005).
187. WAC 388-442-0010 (2005). Fleeing felons are ineligible for all of the above (TANF, food assistance, SFA). A fleeing felon is a person who is fleeing to avoid prosecution, custody or confinement for a crime or an attempt to commit a crime.
188. Immigrant and Refugee Protection Act [Canada], 36(2)(c).
189. Immigration and Refugee Protection Act [Canada], 36(3)(e). The “Young Offenders Act” is the Canadian Statute dealing with juveniles.
190. RCW 9A.44.130 (2005); RCW 13.40.217 (2005) authorizes the release of information to law enforcement agencies and to a website, regarding juveniles adjudicated of sex offenses. RCW 4.24.550 (2005) governs the release of information to a website.
191. *Id.*
192. RCW 9A.44.130(10), (11) (2005).
193. RCW 9A.44.140(4)(a) (2005).
194. RCW 9A.44.140(4)(b) (2005).
195. *Id.*
196. RCW 9A.44.140(1)(a) (2005).
197. RCW 9A.44.140(1)(b) (2005).
198. RCW 9A.44.140(1)(c) (2005).
199. RCW 13.40.217(3) (2005).
200. RCW 4.24.550(10) (2005).
201. RCW 13.40.215 (2005).
202. RCW 13.40.217 (2005).
203. RCW 4.24.550(3) (2005).

I. Is a Juvenile Adjudication a “Conviction”?

Although it may depend on the context, for the most part under Washington law the answer is “yes.” Since 1961, the Basic Juvenile Court Act has provided that “an order of the court adjudging a child delinquent . . . shall in no case be deemed conviction of a crime”;¹ however, in 1997 the Act was amended to state that an adjudication has the same meaning as “conviction” in RCW 9.94A.030 (the Sentencing Reform Act), and “the terms must be construed identically and used interchangeably.”² Similarly, the Sentencing Reform Act (“SRA”) was also amended in 1997 to define “conviction” to include juvenile adjudications.³

Nevertheless, depending on the context, there are some purposes for which a juvenile adjudication is not treated as a “conviction.” E.g., see Section III, Immigration and Section X, Voting. **There are two important contexts where juvenile adjudications are treated as convictions:**

- (1) **Public access to juvenile criminal history; and**
- (2) **Adult sentencing under the SRA.**

Public Access to Juvenile Criminal History: No matter what you call it, conviction or adjudication, a juvenile’s criminal history is accessible to the public through public court records and the Washington State Patrol database.⁴ See Section II, *Criminal History Records*. When responding to criminal background checks, the Washington State Patrol reports all adult and juvenile convictions without distinction.

Effect of Juvenile Adjudications on Adult Sentencing: For adult felony offenses committed on or after June 13, 2002, juvenile felony adjudications will be included in calculating an adult’s offender score for purposes of sentencing under the SRA.⁵ In other words, juvenile adjudications “count” for purposes of adult sentencing and will increase an adult’s offender score which can result in a longer sentence.

II. Juvenile Criminal History Records

Criminal history, which is easily accessible to the general public, includes juvenile adjudications that were committed in Washington after 1977. **Juvenile criminal history does not “go away” when a person turns 18. Washington is one of nine states which allows the public release of juvenile records without any restrictions.**⁶ 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.

Access to Juvenile Records: Juvenile adjudication and arrest information is readily available to the public at the courthouse, the Washington State Patrol, and via the internet. For a small fee, anyone -- employers, landlords, potential love interests, etc. -- may access any individual's juvenile and adult criminal conviction records, arrests under one year old, and pending charges through the Washington State Patrol website, <https://watch.wsp.wa.gov>. More complete criminal history records, including juvenile non-conviction data (dismissals, findings of not guilty et al.) are also available to the public at superior court clerk's offices and through the Washington State Courts Judicial Information System (“JIS”) on-line service.⁷ Certain agencies have free access to criminal history information, e.g., criminal justice agencies and the Department of Social and Human Services (DSHS), while others may subscribe to the on-line service for a fee.⁸ **Juvenile criminal records are available to the public unless and until they are sealed by a court order.**

Correcting Juvenile Records: Requests to correct juvenile criminal history records held by a “juvenile justice care agency”⁹ may be submitted by filing a motion in the juvenile court where the adjudication was entered. Forms from the Washington State Court's website can be found at <http://www.courts.wa.gov/forms/> or by calling the Administrative Office of the Courts at (360) 705-5328.¹⁰

Vacating, Sealing and Destroying Juvenile Records:

To vacate means “to annul, set aside, cancel or rescind; to render an act void.”¹¹ Juvenile adjudications may be **vacated** only after completion of a deferred disposition or after prevailing on appeal or through other post-conviction relief. Vacated juvenile

142. 12 U.S.C. § 1829 (2005).
143. 18 U.S.C. § 1033(e)(2) (2005).
144. 29 U.S.C. § 504 (2005).
145. 42 U.S.C. § 1320a-7 (2005).
146. 21 U.S.C. § 335a (2005).
147. 42 U.S.C. § 13726b (2005).
148. 49 U.S.C. § 44935 (2005); 49 U.S.C. § 44936 (2005).
149. *See* WAC 139-05-220 (2005).
150. WAC 204-91A-060 (2005).
151. WAC 204-93-040 (2005).
152. RCW 72.05.440 (2005).
153. *But see* RCW 46.20.391 (2005) (occupational driver's licenses).
154. WAC 162-12-140(3) (2005).
155. *Id.*
156. RCW 49.60 *et seq.*; WAC 162-12-140(3) (2005).
157. Examples include First Advantage Corporation at www.fadv.com and Tenant Screening Services at www.tenantscreening.com.
158. 24 CFR § 966.4 (2005).
159. 24 C.F.R. § 100.201(a)(2) (2005).
160. 42 U.S.C. § 3607 (2005); 24 C.F.R. § 100.10(a)(4) (2005).
161. 42 U.S.C. § 3602(h)(3) (2005); 24 C.F.R. § 100.201(a)(2) (2005).
162. RCW 59.18.130 (2005).
163. RCW 59.16 *et seq.* (Unlawful Detainer Statute), RCW 59.18 *et seq.* (Residential Landlord-Tenant Act).
164. RCW 59.18.130(8)(a) and (b) (2005).
165. RCW 59.18.130(6) and (9) (2005).
166. RCW 59.20 *et seq.* (Mobile Home Landlord-Tenant Act).
167. These programs include, among others, public housing projects, Section 8 voucher programs and multi-family housing programs (a.k.a. project-based assistance).
168. 42 U.S.C. § 13663 (2005).
169. 42 U.S.C. § 1437n (2005), 24 CFR 966.4(i)(A) (2005).
170. 42 U.S.C. § 13661 (2005), 24 CFR § 982.553 (2005).
171. *Id.*
172. *Id.*
173. 24 CFR § 5.851 (2004).
174. *U.S. Dept' of Housing and Urban Development v. Rucker*, 535 U.S. 125, 122 S.Ct. 1230, 152 L.Ed.2d 258 (2002); 42 U.S.C. 1437d(l)(6)(2005); 24 CFR 966.4(12) (2005).
175. RCW 59.18.130(6) (2005).
176. 42 U.S.C. § 1437f(d)(1)(B)(iii) (2005).

Personnel Procurement Manual, Volume 2, Enlisted Procurement. The **Navy** divides criminal offenses into four categories. Applicants with six or more minor traffic violations, three or more Minor Non-Traffic Violations/Minor Misdemeanors, one or more Non-Minor Misdemeanors, or one or more felonies, require a waiver. See "Comnavcruitcominst 1130.8F," *Navy Enlisted Recruiting Program*.

123. DOD Directive 1304.26 *Qualification Standards for Enlistment, Appointment and Induction* (December 21, 1993, incorporating change, March 4, 1994).
124. 32 CFR § 571.3 (2005)(Army enlistment and waiver criteria).
125. 10 U.S.C. § 978 (c)(1) (2005) (This section can be waived by the president during a time of war).
126. "Former juvenile offender, who had pleaded guilty to second degree robbery and served sentence in juvenile detention facility, requested "certificate of rehabilitation" less than three years after his release, to reinstate his right to possess firearms so that he could join the Marines." *State v. Masangkay*, 121 Wash. App. 904, 91 P.3d 140 (Div. 1, 2004) *petition for review granted*, 153 Wash.2d 1017, 108 P.3d 1228 (March 1, 2005).
127. RCW 9.96A.020 (2005).
128. RCW 43.43.834 (2005).
129. WAC 388-06-0110 (2005).
130. RCW 28A.400.303 (2005).
131. RCW 43.43.830(5) (2005).
132. RCW 43.43.842(2005); WAC 388-97-203 (2005)(nursing homes); WAC 388-76-685 (2005) (adult family homes); WAC 388-06-0170 (2005) (access to children).
133. RCW 43.43.830(7) (2005).
134. WAC 388-06-0170 (2005).
135. WAC 388-06-0180 (2005).
136. RCW 28A.400.320 (2005) (school employees); RCW 28A.400.330 (school contractors); WAC 180-20-101 (school bus drivers).
137. WAC 180-86-013 (2005).
138. RCW 18.130.040 (2005).
139. *Id.*
140. RCW 18.130.180 (2005).
141. The federal laws in this section do not specifically address juvenile adjudications; however, definitions of "conviction" may be broad enough to include Washington juvenile adjudications. Specific statutes should be consulted.

adjudications are still accessible to the public and must be **sealed** in order to remove them from public view.

Sealing a court record means to hide it from the public's view, but the record still exists.¹² Certain adjudications (described below) may be sealed by filing a Motion to Seal with the juvenile court that entered the adjudication.¹³ If the court grants the Motion to Seal, any agency receiving a request for the juvenile's record must reply that the record is confidential, and may not give out any information about its existence or nonexistence. The subject of the sealed record may respond that they have never been convicted on job, housing or other applications.¹⁴ Subsequent juvenile adjudications or adult convictions will result in "unsealing" a previously sealed juvenile adjudication.¹⁵

A diversion agreement, misdemeanor, and Class C Felony can be sealed if the juvenile:

- has been crime-free for **2 years** since the last date of release from confinement;
- has no current adjudication or diversion charges in either juvenile or adult court;
- has paid off all restitution; and
- has not been convicted of a sex offense or a class A felony.

Class B felonies can be sealed if the juvenile:

- has been crime-free for 5 years since the last date of release from confinement;
- has no current adjudication or diversion charges in either juvenile or adult court;
- has paid off all restitution; and
- has not been convicted of a sex offense or a class A felony.

Class A felonies and sex offenses committed after 1997 cannot be sealed.¹⁶

Destruction or Deletion of juvenile court records is only possible for **non-conviction data**¹⁷ and **diversions**.¹⁸

Diversion records may be destroyed if either of the following criteria are met:

- The person is **18 years** or older and
 - **2 years** have elapsed since completion of the diversion agreement;
 - criminal history includes only one referral for a diversion, no prior convictions/adjudications and no subsequent arrests or charges.¹⁹
- or-
- The person is 23 years or older and
 - has completed the diversion agreement and has no pending criminal charges;
 - criminal history includes only referrals for diversion (may be more than one).

Courts are permitted to “routinely destroy” juvenile records where the juvenile is 23 years or older or the juvenile is 18 years or older **and** he or she only has 1 diversion agreement **and** 2 years have passed since that agreement was completed.²⁰

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.²¹

Arrest information not leading to adjudication may be deleted **3 years** after the date of arrest or issuance of citation or warrant.²²

Federal juvenile adjudications: Records relating to federal juvenile adjudications are not released to the public and specifically are prohibited from release “when the request for information is related to an application for employment, license, bonding, or any civil right or privilege.”²³ Federal juvenile adjudications may only be released to law enforcement, courts, treatment programs, the victim of the crime and to agencies considering the person for employment which directly affects national security.²⁴

NOTE: At the time of this writing, the FBI does not remove sealed Washington juvenile records from their database because they are not “expunged” under Washington law. (Washington law does not have a procedure for “expungement.”) The FBI receives juvenile adjudication and arrest information from the Washington State Patrol. The FBI does not release records directly to the public; however, federal agencies and law enforcement have access to FBI records.

- DV misdemeanor who did not lose firearms rights could not be convicted under federal law).
117. RCW 29A.08.520; RCW 10.64.070(2005) (Requires the clerk of the court to forward notice of felony “convictions” of “defendants” to the county auditor or custodian of voting records.) *See also*, FAQ section of Washington Secretary of State’s website, www.secstate.wa.gov/elections/voterguide/faq.aspx. Although some ambiguity may exist with respect to juvenile felonies and voting since the definition of “adjudication” and “conviction” have become more interchangeable after amendments to RCW 13.40 and RCW 9.94 in the mid-1990’s, juvenile adjudications cannot remove civil rights which have not attached and where there is no statutory provision for restoration of civil rights following such adjudications.
 118. RCW 9.94A.637 (2005).
 119. RCW 2.36.070 (2005).
 120. 32 C.F.R. § 96.3 (2005).
 121. 5 U.S.C. §9101 (2005); 32 CFR § 571.3(c)(2)(i)(2005)(Army regulations); *See also* AR 601-210, §2-11(a).
 122. 10 U.S.C. §504, 32 C.F.R. §96.1 *et seq* (2005). The standards for waivers can be complex and variable. The following information is current as of 6/2005, current information should be obtained directly from a recruiter. The **Army** requires a waiver for applicants with (1) six or more minor traffic offenses (where the fine was \$250 or more per offense); (2) three or more minor non-traffic offenses; (3) two or more misdemeanors; or (4) one or more felonies. *See* AR 601-210 Chapter 4. The **Air Force** divides offenses into five different categories based on seriousness and requires waivers based on the category, the number of adjudications and the time frame in which the offenses were committed. *See* “Air Education and Training Command Instruction 36-200,” *Air Force Recruiting*. The **Marines** divide criminal offenses into one of six categories. In general, a waiver is required for: five to nine minor traffic offenses; two to five more serious traffic offenses; two or more Class 1 minor non-traffic offenses; two to nine Class 2 minor non-traffic offenses; two to five serious offenses; or one felony. Individuals with ten or more minor traffic offenses, six or more serious traffic offenses, ten or more Class 2 minor non-traffic offenses, six or more serious non-traffic offenses, or more than one felony are not eligible for a waiver. *See* Marine Corps Order (MCO) P1100.72.B, *Military*

104. 18 U.S.C. § 922(x) (2005).
105. 18 U.S.C. § 922(g) (2005).
106. RCW 9.41.040(1), 9.41.047 (2005).
107. RCW 9.41.040 (2005).
108. RCW 9.41.041(b) (2005).
109. *Id.*; *State v. Masangkay*, 121 Wash. App. 904, 91 P.3d 140 (Div. 1 2004), *petition for review granted*, 153 Wash.2d 1017, 108 P.3d 1228, March 1, 2005.
110. *Id.*
111. 18 U.S.C. 922(g).
112. 18 U.S.C. 921(a)(20).
113. *State v. Wright*, 88 Wash. App. 683, 946 P.2d 792 (Div. 1 1997), *State v. McKinley*, 84 Wash. App. 677, 929 P.2d 1145 (Div. 1 1997)
114. RCW 9.94A.030(11) (2005); RCW 13.04.011(1) (2005); *See In the Matter of JUVENILES A, B, C, D, E*, 121 Wash.2d 80, 847 P.2d 455 (1993)(holding juveniles found to have committed sex offenses must submit to HIV testing under RCW 70.24.340(1)(a) and finding "Numerous other statutes, including sections of the Sentencing Reform Act of 1981, RCW 9.94A, and the Juvenile Justice Act of 1977, RCW 13.40, use "convicted" to reference both adult and juvenile offenders."); *But see also, U.S. v. Walters*, 359 F.3d 340 (4th Cir.(Va.) Feb 20, 2004)(Virginia law finding a juvenile delinquent was not a "conviction" for purposes of the federal firearms statute).
115. 18 U.S.C. 5031-5042 (2005); *U.S. v. Walters*, 359 F.3d at 343.
116. 18 U.S.C. 921(a)(20). However, there are some offenses committed in Washington for which there is no reinstatement process which is recognized by the federal government. Pre-1993, adults and juveniles in Washington did not lose their firearms rights for misdemeanor domestic violence offenses. Therefore, they cannot restore those rights under Washington law. Federal courts have split on whether one can be convicted under federal law where there was no removal or restoration process. *See United States v. Jennings*, 323 F.3d 263 (4th Cir.2003), *cert. denied*, 540 U.S. 1005, 124 S.Ct. 531, 157 L.Ed.2d 412 (2003)(Under South Carolina law DV misdemeanants who did not serve jail time did not lose their firearms rights and therefore could not have them "restored" to meet the exception under 18 U.S.C. § 921(a)(33)(B)(ii)), *but see, U.S. v. Wegryn*, 305 F.3d 593 (6th Cir. 2002)(Michigan

PRACTICE TIP: Remind your clients that juvenile adjudications will **not** go away when they turn 18. 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.

PRACTICE TIP: Remind clients that sealing juvenile records will not reinstate their ability to possess a firearm. This requires a separate motion and order. See Section IX, *Right to Possess Firearms*.

RESOURCES: Good self-help resources are available:

- "Sealing Juvenile Court Records in Washington State," from www.lawhelp.org at www.lawhelp.org/documents/2168014902EN.pdf?stateabbrev=/WA/ (October 2004).
- "Access to Court Records" from the Washington Courts website at <http://www.courts.wa.gov/newsinfo/?fa=newsinfo.accessstocourtrecords> (July 2005).

III. Immigration

A juvenile adjudication and disposition will not generally trigger removal (f.k.a. deportation) or inadmissibility for non-citizens because under the federal immigration laws juvenile dispositions are not considered convictions.²⁵ Nevertheless, there still may be immigration consequences. Determining these consequences can be challenging and complex.

Determine the Juvenile's Immigration Status: If a juvenile respondent was not born in the United States and is not otherwise a U.S. citizen, the first step is determining the juvenile's *immigration status*. The immigration consequences of a juvenile adjudication will depend on the juvenile's immigration status—whether the non-citizen juvenile respondent is living in the United States legally (e.g., as a permanent resident with a “green card”) or whether the juvenile respondent is living in the United States without legal immigration status (i.e., undocumented).

Non-citizen Juvenile Respondents Residing in U.S. Legally: If a non-citizen juvenile is legally residing in the United States (e.g., has lawful permanent residence), a juvenile adjudication will not automatically trigger removal proceedings as an adult conviction might. Nevertheless, not all of the criminal provisions under immigration law require convictions, and a juvenile disposition will be sufficient to trigger deportation/removal under those provisions. For example, a juvenile disposition for the offense of delivery of a controlled substance will likely fall under the INA's “reason to believe” provision that the non-citizen is a drug trafficker.²⁶ Additionally, a finding by a juvenile court that the youth has violated a domestic violence restraining, protective, or no contact order can trigger deportation under INA's “violation of a family protective order” ground.²⁷

Additionally, for those juveniles who are in the U.S. legally but have not yet obtained permanent legal residence (a green card) or citizenship, the Department of Homeland Security (DHS f.k.a. INS) can and will consider juvenile dispositions in making the decision whether to grant their applications. Since these decisions are discretionary it is difficult to predict with any certainty the affect of juvenile dispositions.

Juvenile Respondents Residing in the U.S. Illegally: Juveniles residing in this country who are undocumented (here “illegally”) may be put into removal/deportation proceedings at any time regardless of their criminal history. If an undocumented juvenile is placed into removal proceedings he or she may still be able to remain in the country legally

86. RCW 28A.600.460(3) (2005).
87. *Id.*
88. RCW 28A.600.455 (2005).
89. RCW 9A.46.120 (2005).
90. RCW 28A.600.020(5)(a) (2005).
91. WIAA Policy 18.22; WAC 392-183A-015 (2005).
92. WIAA Policy 18.22.2.
93. *Id.*
94. *See e.g.*, Seattle Public Schools Athletic/Activity Substance Use Policy, www.seattleschools.org/area/athletics/substance.pdf. Under Seattle School District policy a student caught selling or distributing any quantity of illegal drugs, counterfeit drugs or controlled substances will be excluded from athletic participation for 1 calendar year and law enforcement will be contacted. A student caught in possession, use, distribution, transmittal, or under the influence of any drug or counterfeit drugs will be immediately excluded from the sports team for 20% of the contests, but not practice. If the student and parents do not agree to participate in assessment and approved substance abuse education then they will be excluded from participation in athletic events for one calendar year.
95. *See e.g.*, Tacoma School District Regulation 2151R, <http://www.tacoma.k12.wa.us/schoolboard/policies/2151R.pdf>.
96. The University of Washington, Western Washington University, Washington State University and the University of Oregon do not ask about prior convictions/ adjudications on their applications.
97. RCW 43.43.842 (2005).
98. For example, Gonzaga and Seattle Pacific Universities ask about a student's criminal history on their applications. The University of Puget Sound and Whitman College do not ask applicants about criminal history but will consider it if it is revealed through recommendations or other sources.
99. 34 C.F.R. §668.40 (a)(2) (2005).
100. *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).
101. 20 U.S.C. § 1091(r)(2).
102. For information on H.R. 1184 and efforts to amend the HEA, go to www.raiseyourvoice.com.
103. RCW 9.41.040; 042 (2005). Some permissible circumstances include, among others, at an authorized shooting range, hunting with a valid license, on his or her parent's property with parental consent or as a member of the armed forces.

45. RCW 13.40.192 (2005).
46. RCW 7.68.035(b) (2005); RCW 13.40.200(4) (2005).
47. RCW 13.40.192 (2005); RCW 13.40.198 (2005).
48. RCW 13.40.145 (2005).
49. *Id.*
50. RCW 66.44.365 (2005).
51. RCW 69.50.420 (2005).
52. RCW 69.41.065 (2005).
53. RCW 69.52.070 (2005).
54. RCW 13.40.265 (2005) and RCW 9.41.040(5) (2005).
55. RCW 46.20.265 (2005).
56. See RCW 46.61.5055 (2005) for penalty schedule driving under the influence of alcohol.
57. See RCW 46.61.502 (2005) (DUI), RCW 46.61.504 (2005) (Physical Control).
58. RCW 13.40.265 (2005).
59. RCW 46.20.265 (2005).
60. RCW 46.20.285 (2005).
61. RCW 46.20.285 (2005).
62. *Id.*
63. RCW 46.61.500, 530 (2005); RCW 46.20.285 (2005).
64. RCW 46.20.285 (2005), RCW 46.52.020 (2005).
65. RCW 46.20.342 (2005).
66. RCW 46.61.024 (2005).
67. RCW 46.61.685 (2005).
68. RCW 46.61.527 (2005).
69. RCW 13.40.265 (2005).
70. RCW 13.40.080(14) (2005).
71. Wash. AGO. 1990, No. 10 citing RCW 13.40.080(11).
72. RCW 13.40.265 (2005).
73. RCW 46.20.075 (2005).
74. RCW 46.20.075(e)(f) (2005).
75. RCW 46.20.005 (2005).
76. RCW 46.20.317 (2005).
77. RCW 46.20.342 (2005).
78. RCW 46.20.391 (2005).
79. RCW 13.50.050(7) (2005).
80. RCW 13.04.155 (2005).
81. *Id.*
82. RCW 28A.600.010, 020, 040 (2005).
83. RCW 28A.600.020(5) (2005).
84. RCW 28A.600.420 (2005).
85. RCW 28A.600.460(2) (2005).

if eligible for some type of immigration relief such as Asylum²⁸ or Special Immigrant Juvenile Status.²⁹ However, non-citizens do not have a right to counsel in removal proceedings and indigent clients are rarely represented and/or made aware of possible avenues of relief. A juvenile adjudication will not automatically bar admissibility under immigration laws as an adult conviction might but it can and will be considered by DHS and Immigration Courts for discretionary determinations such as requests for relief from removal and applications for permanent legal residence.

Whether or not juveniles are put into removal proceedings depends largely on whether DHS acting through Immigration and Customs Enforcement ("ICE") finds them and wants to remove them. The Juvenile Rehabilitation Administration ("JRA") and some juvenile detention facilities report juveniles who are foreign nationals and in their custody to ICE.³⁰ JRA's policy requires foreign nationals to stay in the institution through the duration of their disposition and makes them ineligible for authorized leave or community placement until "(1) he or she is placed in ICE custody; (2) the ICE confirms that they have no interest in the youth or does not respond within 90 days of sending the Notice of Alien Incarceration; or (3) the youth reaches his or her release date."³¹

Drug Abuse or Drug Addiction: Drug abuse and drug addiction are both grounds of inadmissibility³² and deportability.³³ Since these provisions do not require a conviction they may be applied against a non-citizen juvenile. It is important to be aware of this consequence when considering entering pleas or dispositions for purposes of Juvenile Drug or Juvenile Treatment Courts.

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

- *Immigration and Washington State Criminal Law*, by Ann Benson, Director and Jonathan Moore, Immigration Resource Specialist of the Washington Defender Association's Immigration Project; and
- For information about Special Immigrant Juvenile Status see www.defensenet.org and the Immigrant Legal Resource Center website at www.ilrc.org.

PRACTICE TIP: For technical assistance, WDA members should call or e-mail the Washington Defender Association Immigration Project at defendimmigrants@aol.com or Jonathan@defensenet.org or (206) 726-3332.

IV. Financial Obligations

Juvenile respondents are required to pay legal financial obligations similar to adult defendants. These legal financial obligations include restitution,³⁴ fines, crime victim penalty assessments,³⁵ court costs, and court appointed attorneys fees and costs of defense.³⁶ As of this writing, the one difference between adult and juvenile legal financial obligations is that interest does not accrue on juvenile obligations; however, collection fees may be assessed.³⁷ **Legal financial obligations imposed on juveniles do not “go away” when the juvenile becomes an adult.**

Restitution is the money owed by the respondent to the victim for damages for injury or loss of property. Restitution must be “easily ascertainable”³⁸ and a “foreseeable consequence” of the crime committed.³⁹ Restitution must be ordered and cannot be waived, reduced or converted, with only one exception: restitution ordered to an insurance company may be reduced or waived if the respondent can show that he or she could not reasonably acquire the means to pay the insurance company over a ten-year period.⁴⁰ All co-respondents are liable for restitution jointly and severally.⁴¹ Restitution may be enforced for 10 years after the respondent’s 18th birthday and then jurisdiction to enforce restitution may be extended an additional 10 years.⁴²

Fines may be ordered by the court pursuant to the juvenile offender sentencing standards.⁴³ Fines may be converted into “community restitution” (which is similar to community service hours) if, due to a change in circumstances after the fine has been ordered, the juvenile cannot pay.⁴⁴ Fines may be enforced for up to 20 years after the respondents 18th birthday.⁴⁵

Victim penalty assessments cannot be waived and must be ordered in every juvenile disposition, regardless of whether there is a “victim.”⁴⁶ Like other financial obligations, victim penalty assessments can be enforced for a total of 20 years after the respondent’s 18th birthday.⁴⁷

Court-appointed attorneys’ fees and costs of appeal may be ordered against a juvenile, a parent or another person legally obligated to support the juvenile if the state prevails on an appeal of a juvenile disposition, if the court finds an ability to pay.⁴⁸ This obligation is enforceable for 10 years after the respondent’s 18th birthday or 10 years from the date the juvenile court jurisdiction expires.⁴⁹

case, pre-1997 juvenile class A and sex offenses may be sealed if the juvenile was eligible to seal, i.e. the juvenile had spent 2 years crime-free in the community, prior to the legislative amendment in 1997. *State v. D.S.*, ---Wash.App.--, Div. 2, July 12, 2005 following *State v. T.K.*, 139 Wash.2d 320, 987 P.2d 63 (1999).

17. RCW 10.97.030(2) (2005).
18. RCW 10.97.060 (2005); WAC 446-16-025 (2005); RCW 13.50.050(17).
19. RCW 13.50.050(17) (2005).
20. RCW 13.50.050(22).
21. RCW 10.97.060 (2005).
22. *Id.*
23. 18 U.S.C. § 5038(a) (2005).
24. 18 U.S.C. § 5038 (2005).
25. *Matter of Ramirez-Rivero*, 18 I. & N. Dec. 135 (B.I.A. 1981); *Matter of Devison*, 22 I. & N. Dec. 1362 (B.I.A. 2000).
26. INA § 8 USC 1182(a)(2)(C).
27. INA §8 USC 1227(a)(2)(E)(ii).
28. INA §8 USC 1158.
29. INA §8 USC 1101(a)(27)(J).
30. JRA Bulletin 38, § 38-400(1)(2) (interpreting RCW 10.70.140 to apply to juveniles as well as adults and therefore require reporting the juvenile to ICE).
31. JRA Bulletin 38, § 38-400 (6).
32. INA § 8 USC 1182(a)(1)(A)(iv).
33. INA § 8 USC 1227(a)(2)(B)(ii).
34. RCW 13.40.020(22) (2005).
35. RCW 7.68.035(b) (2005).
36. RCW 13.40.145 (2005).
37. Unlike the 12% interest rate assessed on adult legal financial obligations, *See* RCW 10.82.090 (2005), the Juvenile Justice Act, RCW 13.40, does not provide for interest on legal financial obligations. Collection fees may be imposed. *See e.g.*, King County Code 4.71.160 (Ord. 13995 § 2, 2000).
38. RCW 13.40.020(22) (2005).
39. *State v. Hiett*,---P.3d--- 2005 WL 1528872, (Wash. Jun 30, 2005).
40. RCW 13.40.190(1) (2005).
41. *Id.*
42. RCW 13.40.192 (2005).
43. RCW 13.40.0357 (2005).
44. RCW 13.40.200(4) (2005).

XIX. Endnotes

1. RCW 13.04.240 (2005).
2. RCW 13.04.011(1) (2005).
3. RCW 9.94A.030(11) (2005).
4. RCW 13.30.050 (2) (2005).
5. *State v. Varga*, 151 Wash.2d 179, 86 P.3d 139 (Wash. Mar 18, 2004); RCW 9.94A.525 and RCW9.95A.030, Laws of 2002, ch. 107, § 1.
6. National Center for Juvenile Justice, *citing* Szymanski, L. Confidentiality of Juvenile Delinquency Hearings, NCJJ Snapshot 5(9), Pittsburgh, PA: National Center for Juvenile Justice, 2000, at <http://ncjj.servehttp.com/NCJJWebsite/faq/faq.htm>. The other eight states are Arizona, Idaho, Iowa, Kansas, Michigan, Montana, New York, Oregon.
7. <http://www.courts.wa.gov/jis/>.
8. RCW 10.97.050 (2005); RCW 10.97.100 (2005); RCW 43.43.838.
9. "Juvenile justice or care agency" means any of the following: "Police, diversion units, courts, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of family and children's ombudsman, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415." RCW 13.50.010(1)(a) (2005).
10. RCW 13.50.010(6) (2005).
11. *State v. Noel*, 5 P.3d 747, 749, 101 Wn. App. 623 (Wash.App. Div. 2, 2000).
12. "To seal means to protect from examination by the public or unauthorized court personnel." A record can be completely or partially sealed. The existence of a sealed file, unless statutorily protected, is still viewable by the public, but is "limited to the case number, names of the parties, the notation 'case sealed,' the case type in civil cases and the cause of the action or charge in criminal cases." 2 Wash. Prac., Rules Practice GR 15 (6th ed.).
13. RCW 13.50.050(11-12) (2005).
14. RCW 13.50.050(14) (2005).
15. RCW 13.50.050(16) (2005).
16. RCW 13.40.050(12) (2005). Pursuant to a recent Division II

PRACTICE TIP: Remind clients that **every** juvenile adjudication will carry some financial obligation, i.e., the victim penalty assessment, and these obligations may remain enforceable for 20 years.

PRACTICE TIP: Ask the court to reduce or waive restitution to insurance companies where it is clear that your client will not have the earning potential in the next ten years to pay the restitution.

PRACTICE TIP: Where there are multiple co-respondents jointly and severally liable, advise your client that the court will not "refund" a co-respondent that pays more than his or her share. If a co-respondent makes a restitution payment to the court after one or more of the co-respondents have already paid off the total obligation, the court will return the payment to that co-respondent. Co-respondents who pay off the total restitution obligation have only civil recourse against their non-paying co-respondents.

V. Driving

A juvenile's ability to keep or obtain a driver's license will be affected by adjudications for offenses related to drugs, alcohol, firearms and driving. The juvenile court is required to notify the Department of Licensing ("DOL") when juveniles are adjudicated of certain offenses or when they enter into diversion agreements for certain offenses.

Minors in Possession of Alcohol, Drugs or Firearms: A juvenile adjudicated of Minor in Possession of Alcohol ("MIP");⁵⁰ possession, sale or use of controlled substances ("VUCSA");⁵¹ illegal possession, sale or use of prescription drugs⁵² or imitation controlled substances;⁵³ or possession of a firearm⁵⁴ will have their right to drive revoked for a period of 1 year or until the juvenile turns 17 (whichever is longer) for a first offense. For a second offense the revocation is for two years or until the juvenile is 18 (whichever is longer). The revocation periods for multiple MIP's are treated consecutively but they cannot last beyond a juvenile's 21st birthday.⁵⁵

For both adults and juveniles alike, there are consequences for DUI's and driving with a "lack of physical control." The consequences depend on whether or not this is a first offense, the level of intoxication or impaired ability⁵⁶, and the resulting offense.⁵⁷

Reinstatement: A juvenile convicted of their first offense involving drugs, alcohol or a firearm can petition the court for reinstatement ninety days after the date the juvenile turns 16 or ninety days after the incident date (whichever was later). If it is the second offense then the juvenile cannot petition until they are seventeen or until one year has passed (whichever is longer). Where a juvenile's license has been suspended because of consecutive MIP revocations the license is automatically reinstated when a juvenile turns 21.

Other Offenses Involving Motor Vehicles: For all juveniles who are driving during the offense, adjudications for the following crimes require suspension, revocation or disqualification of driving privileges for varying time periods depending upon whether it is the first or subsequent offense:

- Taking a Motor Vehicle (drivers only) and any felony involving a motor vehicle (1 year revocation);⁶⁰
- Vehicular Assault (1 year revocation);⁶¹

There can be no keener revelation of a society's soul than the way in which it treats its children.

— Nelson Mandela

XVIII. Parental Responsibility

Civil Liability for Shoplifters: In the case of a minor who shoplifts, a parent or legal guardian is liable for the cost of the stolen goods (not more than \$500), penalties between \$100-\$200, attorney's fees and court costs of the victim.²¹⁴ The minor, however, can be liable for restitution to parents for paying the penalty.²¹⁵

Civil Liability for Malicious Mischief: Parents are liable in civil damages up to \$5000 for their minor child's malicious destruction of property or malicious injury to a person if the child is living with them. This does not limit civil damages that might arise from the parents' own negligence.²¹⁶

Attorney's Fees: The court may order parents, legal guardians or juveniles to pay, as they are able, for the costs of publicly funded counsel after a juvenile disposition, modification, or after the state prevails on an appeal.²¹⁷

Costs of Incarceration: The court may order the parent or legal custodian to pay in whole or in part for the costs of "support, treatment, and confinement of the child."²¹⁸

Diversion Costs: Parents or legal guardians must pay, as they are able, for the cost of diversion services.²¹⁹

- Vehicular Homicide (2 year revocation);⁶²
- Racing or Reckless Driving (potential 1 year revocation);⁶³
- Hit and Run Attended (potential 1 year);⁶⁴
- DWLS/R 1st or 2nd degree;⁶⁵
- Attempting to Elude;⁶⁶
- Unattended Child in Running Vehicle;⁶⁷
- Reckless Endangerment in a Construction Zone (60+ day suspension).⁶⁸

Juveniles convicted of these offenses may not petition DOL for early reinstatement.

Diversion Agreements: Juveniles entering into diversion agreements for drug or alcohol offenses will have their licenses suspended or revoked by the Department of Licensing ("DOL") similar to if they were adjudicated guilty in court.⁶⁹

- **Counsel and Release Agreements:** Under certain circumstances, a diversion unit is permitted to "counsel and release" a juvenile rather than enter into a diversion agreement.⁷⁰ Counsel and release agreements are not sent to the DOL and so do not affect a juveniles' ability to drive.⁷¹
- **Reinstatement After Diversion:** DOL will reinstate a juvenile's driving privileges upon receiving notice of completion of a diversion agreement; however, not before 90 days after their 16th birthday or 90 days after they entered into the diversion agreement, whichever is longer, if it was their first offense. If it is their second or subsequent offense, DOL will not reinstate the juvenile's driving privileges until their 17th birthday or 1 year after they entered the diversion agreement, whichever is longer.⁷²

Intermediate Licenses for 16 and 17 Year Olds: New drivers under the age of 18 must obtain an "intermediate license."⁷³ A juvenile will not be eligible for the intermediate license if he or she has received any traffic violations for the previous six months or been adjudicated for any offenses related to alcohol or drugs during the time the applicant had an instruction permit.⁷⁴ An MIP or other driving offense will affect an intermediate license in the same way as a standard license.

Driving Without a License or Driving While Suspended or Revoked: It is a misdemeanor to drive without a valid driver's license if the person's license has been suspended or revoked or if the person is not carrying valid identifying documentation.⁷⁵ Otherwise, driving without a valid driver's license is an infraction.

Anyone over the age of 13 driving without a valid license, can have their license revoked or suspended by the DOL for the same amount of time that a licensed driver would.⁷⁶ A juvenile caught driving with a suspended or revoked driver's license or privilege faces several possible consequences ranging from additional revocation, to imprisonment and fines, depending on the status of the driving privilege.⁷⁷

Temporary Restricted Licenses: Under certain circumstances, a juvenile whose driver's license has been revoked or suspended as a result of criminal adjudications may obtain a "temporary restricted license" by demonstrating that driving a vehicle is necessary to go to school, work, medical appointments or for other reasons enumerated by statute.⁷⁸

Insurance Rates: Most juveniles who drive are covered by their parents' or guardian's insurance policy. The cost of insurance depends on multiple variables including the kind of car, the residence location, the car the parents' or legal guardians' drive, the juvenile's driving record and whether the guardian owns or rents their house. The result of having an adjudication which has been reported to DOL could increase insurance costs.

PRACTICE TIP: The laws regarding license suspension, revocation and reinstatement are complex. For specific questions, review RCW 46.20 and WAC 308-104, contact DOL Customer Service at (360) 902-3900, or e-mail drivers@dol.wa.gov or consult the DOL website: <http://www.dol.wa.gov/ds>.

PRACTICE TIP: Parents concerned about their insurance rates should consult directly with their insurance companies to assess whether their child's diversion or adjudication will affect their policy.

XVII. Foster Children

Juveniles in the state's custody as foster children, i.e., dependent children, may face additional consequences related to criminal adjudications. A foster child's criminal history may affect where that child may be placed, for example, whether they will be placed in a foster home or in a group home. Dependent children who are charged with sex offenses may be considered "sexually aggressive youth" requiring specialized placement even if not convicted of a sex offense.²¹³

PRACTICE TIP: If a juvenile client is dependent, coordinate representation with the client's dependency attorney. A dependency attorney may have useful information about the client, the client's family and services available to the client. If no dependency attorney has been appointed, have your client request appointment of counsel in the dependency proceeding pursuant to RCW 13.34.100 (6).

- **County Websites:** At the time of this writing, some county sheriffs in Washington continue to maintain sex offender websites pursuant to RCW 4.24.550(4) while others are phasing them out. A list of all of the counties websites may be accessed through the WASPC website.²⁰⁶ Individual counties vary in the amount of information they provide on their sex offender websites, for example, some counties describe the offenders offense in detail, some counties list names of Level I sex offenders, etc.

School Attendance and Notification: A juvenile who is found guilty of a sex offense will not be allowed to attend the school attended by the victim or their siblings.²⁰⁷ If a juvenile is enrolled in school and convicted of a sex offense, the court must notify the principal of the student's school of the disposition of the case, after first notifying the parent or legal guardian that the notification will be made.²⁰⁸ The principal shall then notify all of the student's teachers and anyone who supervises the student or "for security purposes" should be aware of the student's criminal record.²⁰⁹ (NOTE: This requirement applies to students who are enrolled in school at the time of disposition—which many detained juveniles are not.)

Juvenile sex offenders who are admitted to or employed by a **public or private institution of higher education** must notify the sheriff of their county of their intent to attend the institution or begin employment within ten days of enrolling/acceptance or by the first business day after arriving at the institution, whichever is earlier.²¹⁰

Effective September 1, 2006, juveniles required to register as sex offenders must notify the sheriff of their county of their intent to attend **any public or private school** within 10 days of enrolling or prior to arriving at the school, whichever is earlier. The sheriff is then required to notify the principal of the school.²¹¹ The principal is required to notify all of the student's teachers and any others who supervise the juvenile or "for security purposes" should be aware of the juvenile's record, if the juvenile sex offender is classified as risk Level II or III. For Level I offenders, the principal must provide information only to school personnel who "for security purposes should be aware of the student's record."²¹²

VI. School Issues

School Notification: After any arrest or decision to arrest, the police or prosecuting attorney **may give to a school** any information "pertaining to the investigation, diversion and prosecution of a juvenile attending the school," including any incident reports.⁷⁹

Adjudication of the following offenses **requires notification to the principal** of the school where the juvenile attends:⁸⁰

- a violent offense as defined in RCW 9.94A.030;
- a sex offense as defined in RCW 9.94A.030;
- toxic fumes under chapter 9.47A RCW;
- a controlled substance violation under chapter 69.50 RCW;
- a liquor violation under RCW 66.44.270; or
- any crime under RCW's 9.41 (Firearms), 9A.36 (Assault), 9A.40 (Kidnapping), 9A.46 (Harassment), and 9A.48 (Arson).

The principal must give information received pursuant to the above notification to the student's teachers, persons who supervise the student and anyone else the principal deems necessary for security purposes.⁸¹

Discipline, Suspension or Expulsion: All juveniles in Washington have a constitutional right to education. Nevertheless, a student may be disciplined, suspended or expelled from school for violating school rules as defined by the school district.⁸² Suspension or expulsion from school may result from criminal or non-criminal misconduct. For the offenses listed above which require school notification (violent offenses, sex offenses, etc.) the principal is required to "consider" imposing a long-term suspension or expulsion.⁸³

- **Firearms:** A **mandatory one year expulsion** will be imposed on a student who is "determined to have" carried a firearm onto, or to have possessed a firearm on, public elementary or secondary school premises, public school-provided transportation, or areas of facilities while being used exclusively by public schools.⁸⁴
- **Crimes Against Teachers and Other Students:** By statute, if a juvenile commits assault, kidnapping, harassment or arson directed toward a teacher, that student cannot be assigned to that

teacher's classroom again.⁸⁵ If a juvenile commits any of those offenses against another student, the juvenile may be removed from the classroom of the victim for the duration of their school attendance.⁸⁶ Commission of any of those offenses is grounds for suspension or expulsion.⁸⁷

- **Gang Activity:** A student enrolled in a public school may be suspended or expelled if the student is a member of a gang and knowingly engages in "gang activity" on school grounds.⁸⁸ A student found to have committed the offense of "criminal gang intimidation"⁸⁹ must also be considered for long term suspension or expulsion where there have been two or more violations in three years.⁹⁰

Sports Eligibility: Eligibility to participate in school athletic programs in Washington is governed by the rules of the Washington Interscholastic Activities Association (WIAA), individual school districts and individual schools.

- **Drugs:** Student athletes found to have violated the laws of prescription drugs (RCW 69.41) or controlled substances (RCW 69.50), either by the illegal possession, use or sale, will be immediately ineligible for participation in an interscholastic sports program pursuant to WIAA rules.⁹¹ The ineligibility continues for the remainder of the year for the first violation.⁹² In order to be eligible the following year, the student must meet with a "sports eligibility board." A second violation requires ineligibility for 1 calendar year and a third violation results in permanent ineligibility.⁹³ School Districts and schools may have their own eligibility policies which are not inconsistent with the WIAA rules.⁹⁴
- **Other Criminal Activity:** WIAA rules do not specifically address other criminal activity; however, the rules do require eligible athletes to meet academic and attendance requirements. School districts generally have codes of conduct which, if violated, may preclude sports eligibility. For example, school districts may have ineligibility rules regarding the possession or use of alcohol or unsportsmanlike conduct.⁹⁵

written notice to:

- The chief of police of the city where the juvenile will reside;
- The sheriff of the county where the juvenile will reside;
- The public or private school board of the district where the juvenile will attend or last attended school;
- The victim, if the victim requested notice in writing;
- Any witnesses who testified against the juvenile, if the witnesses requested notice in writing;
- Any person specified in writing by the prosecuting attorney.²⁰¹

Notices to law enforcement must include at a minimum, the identity and criminal history behavior of the offender and the department's risk level classification.²⁰²

For **Level III** sex offenders, the county sheriff where the offender is registered must publish notice in at least one "legal newspaper with general circulation in the area of the sex offender's registered address or location." The sheriff **may** also provide notice to the public at large through community notification meetings, fliers, etc. For sex offenders classified as **Level I and II**, the sheriff must disclose "relevant" information to "other appropriate law enforcement agencies" and **may** disclose information upon request to the victim, witnesses or neighbors of the offender. For **Level II** offenders, the sheriff **may** also disclose information to, among others, public and private schools, day care centers, public libraries, and organizations serving women, children and vulnerable adults that are near where the offender will reside or will be regularly found.²⁰³

Sex Offender Websites

- **State Website:** Since 2004, WASPC maintains a searchable statewide sex offender website, which includes juvenile sex offenders, *The Washington State Sex Offender Information Center*.²⁰⁴ The website posts the following information about Level II and III registered adult and juvenile sex offenders:
 - Photograph;²⁰⁵
 - Identifying information;
 - Conviction/adjudication information – without detail (no date of offense, nature of crime, or age of victim);
 - Address within a block, e.g., "85XX N. 100th St.

- **Class B sex or kidnapping felonies:** A person convicted as a juvenile may be relieved of the duty to register by petitioning the court as set forth above or the duty to register will end if the juvenile has no prior sex or kidnapping offenses and has spent **15 consecutive years** in the community without being convicted of any new offenses.¹⁹⁷
- **Class C or an attempt to commit a Class C sex of kidnapping felony:** A person convicted as a juvenile may be relieved of the duty to register by petitioning the court as set forth above or the duty to register will end if the juvenile has no prior sex or kidnapping offenses and has spent **10 consecutive years** in the community without being convicted of any new offenses.¹⁹⁸

Effect of the Duty to Register: Sex offender registration will result in various levels of community notification depending upon the person's risk level and the discretion of the county sheriff. The law **requires** some level of notification/public disclosure of sex offender information and **permits** other disclosure at the discretion of the county sheriff.

Risk Levels: All juveniles convicted of sex or kidnapping offenses are assigned a risk level of I, II or III by the Department of Social and Health Services, through the Juvenile Rehabilitation Administration ("JRA"). Levels I, II and III indicate a low, moderate or high risk of re-offense in the community at large.¹⁹⁹

Once a juvenile is released to the community, the sheriff of the county where the juvenile resides must assign a risk level after considering the level assigned by JRA. If the sheriff makes a decision to change the offender's risk level, the sheriff must give notice to JRA with reasons for the change in classification. Notice of the change must also be given to the Washington Association of Sheriff and Police Chiefs (WASPC).¹⁹⁰ There are no statutory criteria for determining when a risk level should be changed by the county sheriff and no statutory procedures for an offender to request a change in risk classification.

Notification: For any juvenile convicted of a sex, violent or stalking offense, no later than 30 days prior to discharge, parole, release, leave or transfer to a community residential facility, JRA must send

VII. Applying to College

College and University Admissions: As of the date of this publication, **Washington community and technical colleges, and major state universities** do not use an applicant's criminal history to inform their admissions decisions.⁹⁶ However, a student's criminal history may influence his or her ability to complete a practicum in fields that have restrictions on participation. For example, early childhood education, teaching and health care practicums are limited to students who are not legally banned from having contact with people from vulnerable populations and require criminal background checks for participation.⁹⁷ See also Section XII, *Employment*.

The "**Common Application**" used by many **private schools** around the country **does not ask** about prior convictions/adjudications. However it requires a teacher evaluation and school report which may disclose conviction/adjudication information. In Washington, each private college or university treats an applicant's criminal history differently. Some ask the applicant about his or her criminal history directly, others do not ask the student but expect the information to come from teachers and/or counselors.⁹⁸

VIII. Federal Student Loans

Juveniles convicted of drug offenses do not fall under the Higher Education Act's ban on federal financial aid.⁹⁹ Since 1998, a person **convicted as an adult 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:¹⁰⁰

- (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.¹⁰¹

NOTE: Since 2001, bills have been introduced in Congress to repeal the 1998 amendment to the Higher Education Act ("HEA") restricting student loans based on drug convictions (20 U.S.C.1091(r)). Recently, in March, 2005, H.R. 1184 was introduced.¹⁰²

XVI. Juvenile Sex Offenses

In Washington, **juveniles convicted of sex offenses or kidnapping offenses as juveniles are subject to the same sex offender and kidnapping registration and notification requirements as adults.**¹⁹⁰

They are required to register as sex offenders for sex offenses committed in Washington or in another state.¹⁹¹ Knowingly failing to register or failing to notify the sheriff of a changed name or changed residence is a crime.¹⁹² **The duty to register for a juvenile sex offense does not "go away" when the person becomes an adult.**

End of the Duty to Register as a Sex Offender: A person convicted of a juvenile sex or kidnapping offense may be relieved of the duty to register as a sex offender by either petitioning the court or, under certain circumstances, by the passage of time.

- **Petitioning the Court**
 - **Juveniles 15 years or older at the age of their offense** may be relieved of the duty to register at any time by petitioning the court and showing, with clear and convincing evidence, that future registration will not serve the purposes of the registration laws.¹⁹³
 - **Juveniles under 15 years old at the age of their offense** may be relieved of the duty to register if they (1) have not been adjudicated of any additional sex or kidnapping offenses during the twenty-four months following the adjudication for the offense giving rise to the duty to register, and (2) prove by a preponderance of the evidence that future registration will not serve the purposes of the registration laws.¹⁹⁴

These provisions do not apply to juveniles prosecuted as adults.¹⁹⁵

- **Expiration of Duty to Register by the Passage of Time**
 - **Class A sex or kidnapping felonies:** A person convicted as a juvenile must register **forever unless** relieved of the duty to register by petitioning the court as set forth above.¹⁹⁶

XV. 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; however, juvenile adjudications should not bar entry to Canada. 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.”¹⁸⁸ Inadmissibility under this provision excludes offenses under the “Young Offenders Act,”¹⁸⁹ which is the equivalent of the Juvenile Justice Act. Therefore, **juvenile adjudications should not bar a person’s entrance into Canada.**

Other Countries:

The U.S. Department of State lists “Foreign Entry Requirements” on their website, <http://travel.state.gov/visa/americans1.html>. The information is provided from foreign embassies and, as of October 2004, only Canada listed a criminal record as something which could affect entry. Current entry requirements should be obtained directly from consular offices of the countries to be visited.

IX. Right to Possess Firearms

Possession of Firearms Generally Prohibited for Minors: A person under 18 years old may not lawfully own or be in possession of a gun in Washington except under statutorily limited circumstances.¹⁰³ Federal law also has restrictions on gun ownership by persons under 21¹⁰⁴ and prohibits possession of firearms by fugitives, drug addicts, illegal aliens, persons dishonorably discharged from the military and persons subject to domestic violence protection orders.¹⁰⁵

Revocation of the Right to Possess Firearms: The following crimes, upon adjudication, a finding of not-guilty by reason of insanity, or a dismissal after a period of deferral, will take away a juvenile’s right to possess firearms **even after they turn 18**, until their right is restored by a court of record:

- any felony;
- the following crimes of domestic violence:
 - assault in the fourth degree;
 - coercion;
 - stalking;
 - reckless endangerment;
 - criminal trespass in the first degree;
 - violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence.

Possessing a firearm after the right has been revoked is a felony.¹⁰⁷

Reinstatement: In Washington, an adult or juvenile who is prohibited from possessing a firearm because of a criminal adjudication may petition the court for reinstatement of this right under the following circumstances:¹⁰⁸

- The person has not been convicted of a sex offense or a Class A felony; and
- **Felony offense:** after **5 years** crime free if the individual has no prior felony convictions/adjudications that prohibit the possession of a firearm counted as part of his or her offender score;

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

Class A felons and sex offenders can only reinstate their rights to possess firearms in Washington by **obtaining a pardon, annulment, or a certificate of rehabilitation** (which is not available for Washington convictions¹⁰⁹). These are also the only means available for reinstating firearm rights before the requisite time periods have expired.¹¹⁰

Federal Law: Persons convicted of felonies or DV misdemeanors are also prohibited from possessing firearms under federal law.¹¹¹ Whether a juvenile adjudication is a “conviction” for purposes of the federal law of unlawful possession of a firearm is determined by the state law where the person was “convicted.”¹¹² Although there are no federal decisions specifically addressing this issue, state juvenile adjudications in Washington have been found to be “convictions” for purposes of Washington’s law prohibiting felons from possessing firearms.¹¹³ Ambiguities still may exist; however, there are statutes and cases which weigh in favor of a Washington state juvenile adjudication being considered a conviction for federal firearms prohibitions.¹¹⁴ See also Section I, *Is a Juvenile Adjudication a “Conviction”?* Conversely, a federal juvenile adjudication will not remove the right to possess a firearm under federal law because under the Federal Juvenile Delinquency Act, a juvenile is not “convicted” but “adjudicated.”¹¹⁵

Reinstatement under Washington law of firearm rights lost pursuant to a Washington state juvenile adjudication should prevent prosecution under federal law.¹¹⁶

PRACTICE TIP: Juvenile clients with felony or domestic violence adjudications should be reminded that they cannot legally possess a firearm even after they turn 18 unless a court grants them the right. It is not automatic. Sealing juvenile records will not reinstate the right. A hunting license may be issued to persons whose right to possess a gun has been revoked, but this will not protect them from criminal liability. Also, the right will need to be restored to obtain any employment which requires possession or use of a firearm.

XIV. Public Benefits

Temporary Assistance for Needy Families (TANF): TANF provides cash benefits and food assistance to families who have at least one minor child residing at home, or to an individual who is pregnant.¹⁷⁹ Each family receives cash assistance and food stamps according to a calculation based on income and number of eligible family members.¹⁸⁰

Although state and federal law previously banned both adult and juvenile drug felons from receiving cash assistance under TANF¹⁸¹, **as of September 1, 2005, neither juvenile nor adult felony drug convictions affect TANF eligibility in Washington State.**¹⁸² **Food stamps** are also no longer affected by drug convictions.¹⁸³

Detention/Institution Time and TANF: If a juvenile is detained for longer than 90 days, the family will not receive TANF assistance for them.¹⁸⁴ Treatment in a substance abuse facility does not trigger ineligibility and is treated as a “temporary absence” unless for more than 90 days.¹⁸⁵ If the caretaker fails to report the child’s absence within five calendar days from when the caretaker first learns that the child will be absent for more than 90 days, they will be ineligible for cash benefits for one calendar month.¹⁸⁶

Fleeing Felons: Juveniles with outstanding felony warrants or outstanding warrants issued as a result of parole or probation violations are ineligible to receive cash or food assistance.¹⁸⁷

Social Security Income: Many juveniles qualify for SSI and receive it through a representative payee. Juvenile adjudications will not affect a juvenile’s eligibility to receive these federal benefits.

any criminal activity that threatens the health, safety, or right to peaceful enjoyment of residents living in the immediate vicinity may result in eviction.¹⁷⁶ **Illegal drug use or a pattern of illegal drug use or alcohol abuse** that interferes with the health, safety or right to peaceful enjoyment of the premises may result in eviction, although evidence of rehabilitation may be considered.¹⁷⁷

Fleeing felons (people with felony warrants) and probation or parole violators may also be evicted from federally funded housing.¹⁷⁸

PRACTICE TIP: Ask your client whether he or she lives in government subsidized housing and advise the client that a criminal adjudication could result in the loss of their family's housing and also impact their ability to get into government funded housing, especially HUD funded housing, in the future.

PRACTICE TIP: Since so many evictions are discretionary, rehabilitation efforts are helpful. Evidence that the offender is participating or has participated in a treatment program can be used to negotiate with the housing authority.

PRACTICE TIP: If your client's family is involved in an eviction proceeding, contact a housing specialist through the Northwest Justice Project in your region at www.nwjustice.org.

X. Voting and Jury Service

Voting: At the time of this publication, juvenile adjudications do not result in the loss of the right to vote.¹¹⁷ Adult felony convictions will prohibit persons from voting until their civil rights have been restored.¹¹⁸

Jury Service: Juvenile adjudications should not affect a person's ability to serve on a jury. Like voting, only adult felons who have had their civil rights restored may serve on juries.¹¹⁹

XI. Military Service

All branches of the military are required to do criminal background checks on applicants which include juvenile criminal histories (citations, arrests and adjudications).¹²⁰ An applicant's **full and complete criminal history** must be given to the Armed Forces, including disclosure of convictions/adjudications that have been expunged or sealed.¹²¹

A juvenile felony adjudication will generally preclude military service; however, each branch has the discretion to make exceptions by granting **waivers**.¹²² According to the Department of Defense, the waiver procedure is not automatic and approval is based on each individual case: "One of the considerations in determining whether a waiver will be granted is the individual's ability to adjust successfully to civilian life for a period of time following his or her release from judicial control."¹²³

Even sealed juvenile adjudications may require a waiver.¹²⁴

Other Barriers to Enlistment: The Armed Forces will test applicants for **drug and alcohol use and dependency**. Anyone found to be dependant on drugs or alcohol will be denied entrance.¹²⁵ Also, **ineligibility to possess a firearm** as a result of a conviction may preclude service until the right has been restored.¹²⁶ See Section IX, *Right to Possess Firearms*.

PRACTICE TIP: Juvenile clients considering military service should contact a local recruiter to determine whether convictions/adjudications will preclude service or can be waived.

Mandatory Lifetime Bans on Admission:

- Households which include a registered sex offender, adult or juvenile;¹⁶⁸ and
- Households where a member has been convicted, as an adult or juvenile, of manufacturing or otherwise producing methamphetamine on the premises of a federally assisted housing program.¹⁶⁹

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).¹⁷⁰
- Households which include a member, adult or juvenile, who the housing provider determines **is currently engaged in illegal use of a controlled substance** or who the housing provider has a reasonable belief that the household member's **pattern of illegal drug use may threaten the health safety or right to peaceful enjoyment of the premises** by other residents. For the latter, the housing provider may consider the household member's rehabilitation as evidenced by completing or participating in treatment.¹⁷¹

Discretionary Ban on Admission: A HUD housing provider *may* exclude any household which includes a member currently engaging in, or has engaged in during a reasonable time before the admissions decision any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees.¹⁷²

Discretionary Evictions:¹⁷³ **Drug related criminal activity by juvenile household members, "on or off" the premises of a public housing project** *may* result in the entire family being evicted since family members may be evicted for the drug related activity of other household members or guests.¹⁷⁴ There may be an "innocent tenant" defense under Washington law¹⁷⁵ or some municipal codes. For other HUD funded projects, **drug related criminal activity "on or near" the premises** or

XIII. Housing

Residential Screening: Both public and private housing landlords may look at an individual's criminal history, including juvenile criminal history, before or during their tenancy. A juvenile's criminal history can discredit their entire household from housing. Many landlords rely on tenant screening services which get their information from public records.¹⁵⁷ If a public housing authority wants to terminate a tenant's lease based on information from their criminal history they must first notify the tenant and allow the tenant to dispute the accuracy or relevance of the record.¹⁵⁸

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 because of past drug addiction.¹⁵⁹ But a **private landlord may deny housing based on conviction for the manufacture or distribution of a controlled substance¹⁶⁰ or a reasonable belief that an applicant is currently engaged in illegal drug use.¹⁶¹** Also a tenant who is aware of a subtenant, sublessee, resident or anyone else engaging in drug, criminal or gang activity at the rental premise may be evicted from private residential property.¹⁶²

The statutes governing **eviction** from residential property¹⁶³ allow landlords to evict a person who has been **arrested** for assault occurring on the premises or unlawful use of a firearm or other deadly weapon on the premises.¹⁶⁴ 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.¹⁶⁵ Different laws apply to **mobile home parks** and allow for eviction for criminal activity which threatens the health, safety or welfare of the tenants.¹⁶⁶

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 programs¹⁶⁷ generally administered through local Public Housing Authorities ("PHAs") like the Seattle Housing Authority. Different housing providers receiving the same HUD funding may have different admission and eviction requirements; however, HUD requires landlords to deny housing for certain crimes. **For federal housing laws, juvenile adjudications will be treated as convictions.**

XII. Employment

Juvenile adjudications, like adult convictions, can result in ineligibility for a variety of jobs and occupational licenses in Washington State. 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.¹²⁷ Unless they have been sealed, juvenile adjudications are accessible to employers through the Washington State Patrol, the courts, and private companies which collect information from public databases. See Section II, *Juvenile Criminal History Records*.

Background Checks Required: Criminal background checks are required for all persons and organizations who are licensed to **provide services to children or vulnerable adults.**¹²⁸ For people applying for licenses to provide child care, foster care or care for persons with developmental disabilities, DSHS must do background checks on all household members 16 years and older who are not already foster children.¹²⁹ **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.¹³⁰ Juvenile adjudications will be disclosed just like adult convictions on criminal background checks. See Section II, *Juvenile Criminal History Records*.

Nursing Homes, Childcare, etc.: "**Crimes against children or other persons**"¹³¹ will prohibit persons from working in **nursing homes, adult family homes, boarding homes, and child care facilities.**¹³² This includes, among other offenses, assault in the fourth degree. "**Crimes of financial exploitation,**"¹³³ 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.¹³⁴ 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.¹³⁵

Schools: Crimes against children will disqualify persons from being **school employees, contractors with schools or school bus drivers.**¹³⁶ **Volunteers may also be disqualified because of criminal history. 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.”¹³⁷

Professional Licenses: Many jobs require a person to be licensed by the Washington State Department of Licensing. Examples include, among others, massage therapists, midwives, chiropractors, cosmetologists, nursing assistants, dental assistants, and mental health counselors.¹³⁸ Some jobs also require licensing by specific boards, such as the optometry board and board of pharmacy.¹³⁹ Juvenile adjudications can interfere with a person’s ability to obtain these licenses from the Department of Licensing. Violating drug laws is specifically listed as “unprofessional conduct” to be considered in licensing determinations.¹⁴⁰

Federal Laws Affecting Employment Opportunities:¹⁴¹ 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).¹⁴² 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;¹⁴³
- holding any of several positions in a union or other organization that manages an employee benefit plan;¹⁴⁴
- providing healthcare services for which they will receive payment from Medicare;¹⁴⁵
- working for the generic drug industry;¹⁴⁶
- providing prisoner transportation;¹⁴⁷ and
- employment in airport security.¹⁴⁸

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 impacted by criminal history):

- Law enforcement;¹⁴⁹
- Tow truck operators contracting with Washington State Patrol;¹⁵⁰
- Washington State Patrol assistance van drivers;¹⁵¹
- JRA employment or volunteer positions.¹⁵²

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 V, Driving) may prohibit some individuals from future employment, at least for a period of time.¹⁵³ Similarly, the consequence of losing the right to possess a firearm will disqualify people 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. 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.¹⁵⁴ 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.¹⁵⁵

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.**¹⁵⁶ Certain agencies and organizations, e.g., schools and DSHS, are exempt from this requirement.

PRACTICE TIP: Remind juvenile clients that unsealed juvenile criminal history will be accessible to employers, even after the juvenile turns 18, and should be disclosed on employment applications. **The only way to remove juvenile criminal history from public view is by obtaining an order sealing the records in the court where the juvenile disposition occurred.**