



Juvenile Records in Minnesota

“The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth.”
Minn. Stat. §260B.001, subd. 2.

“Rather than serving in the U.S. Senate for almost 20 years, or having so many other wonderful life experiences, I could have served a longer sentence in prison for some of the stupid, reckless things I did as a teenager. I am grateful to have gotten a second chance -- and I believe our society should make a sustained investment in offering second chances to our youth.” Alan K. Simpson. U.S. Senator, Wyoming.



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WARNING

Some juvenile records are public and easily accessible by employers and landlords who screen applicants based on criminal history.

If a 16 or 17 year old juvenile is charged with a felony-level offense, the court proceeding is public and the records are public. Minn. Stat. §260B.163, subd. 1. It does not matter if the charges were later dismissed or reduced, it will still be a public record and anyone, including future employers and landlords, can access it and deny employment or housing based upon the record.

Additionally, if the juvenile is certified to adult court (a possibility for offenders as young as 14 who are charged with a felony-level offense), or has the adult portion of an extended jurisdiction juvenile sentence executed, all of the records relating to the proceeding are public. See Minn. Stat. §260B.125.

As a result, many people are denied opportunities to work, are unable to find safe and affordable housing, and have limited access to higher education because of their juvenile records.

Even private juvenile records can result in sanctions that limit career options for people.

Private juvenile records can be accessed by government agencies making licensing decisions about who may work in certain fields. For example, The Minnesota Department of Human Services is statutorily mandated to access and review private juvenile records for the purposes of certain background studies. Minn. Stat. §245C.08 subd. 4. These studies are done for jobs such as working in a hospital, in a nursing home, as a personal care attendant, in childcare. DHS background studies are also conducted on people seeking to become foster parents or adopt children. Approximately 270,000 of these background studies are conducted in Minnesota each year.

The disqualification can also be based on an arrest or charge without a finding of guilt or adjudication if the Department of Human Services determines by a “preponderance of the evidence” that the person engaged in the conduct. Minn. Stat. §245C.14 subd. 1 (a)(1).

Certain types of crimes or conduct will prevent someone from ever working in these fields. See Minn. Stat. §245C.15. Other instances of government access to juvenile records leading to possible disqualification are contained in this report.

It can be difficult to determine the long term consequences of a juvenile record. If you have questions about how your juvenile record could impact your future it is best to consult a lawyer. For more information call the Council on Crime and Justice Criminal Records Information Hotline: 612-353-3024.

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Introduction

Current laws, policies, and practices in Minnesota sometimes fall short of the spirit if not the letter of the principles embodied in Minnesota's delinquency law. In particular, practitioners, policymakers, and parents alike have voiced concern that the creation, retention, and dissemination of juvenile delinquency records unnecessarily limit opportunities for youths' personal and social growth.

Thousands of Minnesota youth are adversely impacted by juvenile delinquency records, and a disproportionate number are youth of color due to the racial disparities in our juvenile justice system. Minnesota's greatest asset is at risk: we depend upon our youth for a thriving and diverse citizenry and leadership; juvenile delinquency records diminish that potential.

The purpose of this report is to identify and define the collateral consequences – legal disabilities and practical barriers – of a juvenile record in Minnesota. We will describe the Minnesota laws that limit the ability of juveniles to be employed, housed, and educated. The report was created by the Council on Crime and Justice with input from professionals in the field and funded by the Juvenile Justice and Delinquency Prevention Act through the Minnesota Juvenile Justice Advisory Committee and Minnesota Department of Public Safety Office of Justice Programs.

Background and History of Juvenile Justice System

The juvenile justice system began as an institution that fundamentally differed from the adult criminal justice system both in philosophy and procedure.¹ Created more than a century ago as a rehabilitative alternative for youth to the punitive adult criminal court system, it was one of many reforms focused on rehabilitating children.² Children's unlawful behavior was believed to result not from inherent criminality, but rather, from damaging social circumstances and failed child rearing.³ In contrast to adult criminal court, juvenile court was fundamentally rehabilitative, adopting a *parens patriae* doctrine, in which the state intervened as a child's guardian, protecting a child from her own wrongdoings and those of adults around her.⁴

To effectively address the needs of each individual child, the juvenile court functioned on extensive judiciary discretion rather than strict, formal rules of evidence and procedure.⁵ From the beginning, limiting public access to court proceedings was integral to the juvenile justice system's rehabilitative goal: by keeping juvenile records private, youth could have a second chance without being stigmatized by their records.

¹ Perry L. Morierarty, "Combating the Color-Coded Confinement of Kids: An Equal Protection Remedy," *New York University Review of Law and Social Change* 32:2 (2008): 286.

² Barry C. Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* (New York: Oxford University Press, 1999), 43.

³ Perry L. Morierarty, "Combating the Color-Coded Confinement of Kids," 286.

⁴ *Id.*

⁵ *Id.*, 294.

TOUGH ON CRIME

Within the last fifty years, however, social, cultural, judicial and legislative changes have transformed the juvenile justice system from a social welfare system into a punitive criminal court. Throughout the 1960s-1990s, youth were granted some constitutional rights of adults, but denied others. During the due process revolution of the 1960s, three landmark United States Supreme Court decisions, *Kent*, *In re Gault*, and *In re Winship*, granted juveniles their constitutional right to due process.⁶ These cases and others theoretically “protected” juveniles; however, by treating juvenile delinquency cases like crimes they paved the way for a policy shift that would increase the punitive effect of juvenile court while limiting judicial discretion to grant relief to delinquent juveniles. Cases such as *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) and *Schall v. Martin*, 467 U.S. 253 (1984) denied youth the right to a jury trial and allowed preventative pretrial detention, respectively.

The denial of full constitutional rights, including the right to a jury trial and bail, compounded with the unprecedented severity of the “tough on crime” movement of the 1980s and 1990s left youth with what has been deemed by judicial officials and scholars as “the worst of both worlds,” a juvenile justice system which has become increasingly punitive without affording children the same procedural safeguards as adults.⁷ The “tough on crime” movement in the 1960s emerged from changes in race relations after the civil rights movement, the country’s transition from an industrial to a service economy, suburbanization of whites, urbanization of blacks, the crack cocaine epidemic of the 1980s, and an increase in serious violent crimes committed by juveniles.⁸

Legislatures across the country amended their juvenile codes to include more punitive language and enacted codes that increasingly allowed juveniles to be punished as adults, including “reduced confidentiality protections for a subset of juvenile offenders.”⁹ Prosecutors were granted the authority to bypass juvenile court completely and mandatory exclusion laws required juveniles with specific offenses to transfer.¹⁰

This report will focus on the collateral consequences generated by that shift in policy by examining and cataloguing all of the effects that contact with the juvenile justice system has on people’s lives.

⁶ Specifically the rights to notice, to counsel, to confront and cross-examine witnesses, to a fair and impartial hearing, and to protections against self-incrimination (Moriearty 295). Under *In re Winship*, delinquency convictions had to be proven “beyond a reasonable doubt” (Moriearty 296).

⁷ *Id.*, 287.

⁸ Among youth specifically, juvenile homicide and gun violence increased: Between 1985 and 1993 (peak), the rate of serious violent crimes committed by juvenile offenders based on victim reports to the National Criminal Victimization survey increased 58%. (from “Juvenile Delinquents and Juvenile Justice Clientele: Trends and Patterns in Crime and Justice System Response” by Howard N. Snyder in *The Oxford Handbook of Juvenile Crime and Juvenile Justice* edited by Barry C. Feld and Donna M. Bishop. (Oxford University Press, New York, 2012).

⁹ Perry L. Moriearty, “Combating the Color-Coded Confinement of Kids,” 297.

¹⁰ Barry C. Feld, *Bad Kids*, 27.

DEFINITIONS

Offense Levels: Offenses range from petty misdemeanors to felonies. The level of a juvenile offense is determined by the level of sentence that the offense would carry had it been committed by an adult.

A felony sentence level is one in which a sentence of incarceration for more than one year, or a fine of more than \$3,000, or both, is imposed. *For example: Terroristic Threats (e.g., threatening text message); drug offenses (e.g., possessing another's prescription medication); theft (e.g., any item valued at \$1000).*

A gross misdemeanor sentence level is one in which a sentence of incarceration for 91 to 365 days, or a fine of up to \$3,000, or both, is imposed. *For example: False Information to Peace Officer (e.g., juvenile offering sibling's name and date of birth to officer in lieu of their own).*

A misdemeanor sentence level is one in which a sentence of incarceration for up to 90 days, or a fine of up to \$1,000, or both, is imposed. *For example: Assault (e.g., hitting or pushing with intent to cause harm or fear); Disorderly Conduct (e.g. shouting profanities in a public place).*

A petty misdemeanor sentence level is one in which a sentence of a fine of up to \$300 is imposed. A petty misdemeanor is not a crime. *For example: Petty Misdemeanor amount of Marijuana (i.e., 42.5 grams or less).*

Dispositions: Not all interactions with the juvenile justice system are resolved with an adjudication of delinquency. Below are a few of the most common dispositions (or resolutions) of juvenile delinquency cases in Minnesota:

Arrest: Essentially, a meaningful seizure of liberty, which may result in the juvenile being taken into custody. The arresting officer sends a police report to the prosecutor, who may or may not decide to file a delinquency petition charging the offense.

Dismissal: Both the prosecutor and the court can dismiss juvenile delinquency petitions before trying the individual. The court does not find guilt when it dismisses a charge.

Continuance for Dismissal: The defendant does not plead guilty. The prosecutor suspends prosecution for a period of time. The charges will be dismissed if the defendant complies with conditions of the continuance – typically, no same or similar offenses within a one year period.

Stay of Adjudication: The defendant pleads guilty, however the judge can suspend a finding (or adjudication) of guilt upon the condition that the individual successfully complete probation. Because the court finds no guilt the youth is never found to be delinquent.

Extended Jurisdiction Juvenile: EJJ is a sentencing option that allows the court to extend its jurisdiction over the juvenile until she reaches the age of 21. If the youth fails to successfully complete the EJJ sentence, it will result in an adult conviction and is treated the same as an adult record.¹¹

Other common dispositions such as stays of execution, stays of imposition and executed sentences are not available in juvenile delinquency proceedings.

Generation and Retention of Records

Minnesota creates and stores criminal and juvenile delinquency records at six primary locations:

1. law enforcement agencies,
2. prosecutor offices,
3. courts,
4. correctional offices and facilities
5. probation agents,
6. the Bureau of Criminal Apprehension.

Many of these records are public and a portion of them are available online. Once created and stored, government agencies often transfer these records to other government agencies fulfilling background check requirements. Public Government records are also frequently collected and stored in the databases of private consumer reporting agencies.

LAW ENFORCEMENT RECORDS

Many public organizations fall under the category of “Law Enforcement,” including municipal police departments, county sheriff’s offices, and the Minnesota State Patrol.

These agencies create criminal and investigative records, in digital and paper form, for a variety of reasons: 911 calls, agency investigations, arrests, citations, and other substantial deprivations of individual liberty. See Minn. Stat. §13.82. On a practical level, it can be assumed that law enforcement records will result from incidents involving 911 calls, law enforcement investigations, and law enforcement actions requiring future justification.

In most cases these records are retained indefinitely in an electronic form, but law enforcement agencies typically destroy paper records of delinquency files according to their own schedules.

BUREAU OF CRIMINAL APPREHENSION (BCA)

The BCA is a state wide law enforcement agency that is required by statute to maintain criminal history records. The BCA’s system is Minnesota’s main and most comprehensive repository for criminal records. Law enforcement, court and corrections all submit information to the criminal

¹¹ Minn. Stat. §260B.130.

history system. The system's main limitation is that it only contains the information reported by record-producing agencies.

Minn. Stat. §260B.171, subd. 2 requires the court to send information on gross misdemeanor-level, felony-level, and EJJ cases to the BCA. Similarly, Minn. Stat. §299C.10 subd. 1 requires local law enforcement agencies to share with the BCA information on juveniles arrested for a felony or gross-misdemeanors. The BCA retains these juvenile records according to the following schedule:

BCA (Minn. Stat. §299C.095)

DISPOSITION	Retained
Arrest only	6 months
Petition filed but dismissed	Until notice of dismissal received by BCA
Diversion or continuance for dismissal	Child reaches age 21
Stay of adjudication	Child reaches age 28*
Misdemeanor adjudication	Unclear (not required to be reported to BCA per 260B.171 subd. 2)
Gross misdemeanor adjudication	Child reaches age 28*
Felony adjudication	Child reaches age 28*
EJJ disposition	Subject to the adult retention schedule and retained indefinitely, but are private unless sentence executed (per Minn. Stat. §260B.171)

* Note: If a young adult with a juvenile record is convicted of a felony between the ages of 18 and 28, their juvenile records are retained indefinitely.

COURT FILES

When the prosecutor files a petition of delinquency or a complaint in the adult court (for those juveniles certified to stand trial as adults), the court will create both a physical and an electronic case file. MNCIS maintains juvenile as well as adult records, but public accessibility is limited as many juvenile records are classified as private (see the next two sections for more information on when juvenile court records are publicly accessible).

JUVENILE COURT PHYSICAL FILES

Juvenile physical court files contain all petitions of delinquency, complaints, arraignment and trial documents, orders, and other documents related to the case. Evidence is kept separate from court files and is not retained pursuant to the same timetable as physical files. For limited

purposes under Minn. Stat. §260B, probation and correctional records are considered part of the court's records. Minn. Stat. §260B.171, subd. 4(d).

Under Minn. Stat. §260B.171, the court must maintain records relating to delinquency adjudications until the subject of the record reaches the age of 28. The statute is silent on whether the courts may maintain court records longer than this; currently, the judicial branch maintains the electronic file indefinitely.

Minn. Stat. §260B.171 outlines the following retention schedule for juvenile physical court records:

- 1) Records related to delinquency adjudications until age 28
- 2) Gross misdemeanor or felony-level adjudications until age 28

Note: If the subject of the record is convicted of a felony between the ages of 18 and 28, or is convicted of a felony-level offense in an extended jurisdiction juvenile (EJJ) case, the court must maintain the juvenile record according to the adult court record retention schedule. An EJJ case will also be publicly available regardless of successful completion of probation if it was a felony-level charged when the individual was 16 or 17 years old.

The statutory record retention requirements do not address records related to cases that did not result in adjudications of delinquency.

JUVENILE COURT ELECTRONIC FILES

Each county courthouse in Minnesota maintains a Minnesota Court Information System (MNCIS) database. This database contains all Minnesota court records, including all convictions, adjudications, dismissals, acquittals, and stays of adjudication.

A person may go to any county courthouse to gain access to all *public* court records in Minnesota. Most county courthouses in Minnesota have a MNCIS computer terminal, which allows free public access to MNCIS court records. Some MNCIS computer terminals allow free printing, but only the court clerk can certify copies.

Currently, courts maintain MNCIS records indefinitely. This raises questions about the value of an electronic file that remains after the court destroys the underlying physical file. The electronic file contains only an outline of the case, and misses much of the detail that explains the underlying charge and court disposition. This can create difficulty for the subject of the record, who may be handicapped in explaining his enduring electronic record at a later date. Also, this uneven retention could impede post-conviction relief.

Note: cases that did not result in conviction or adjudication do not disappear from the court's electronic systems after resolution of the case. Only expungement of the court record terminates public access to this electronic information. This may confuse many people who have heard that certain types of cases "will not go on your record."

Public vs. Private Juvenile Records

Minn. Stat. §13.02 creates three classifications of data on individuals, and defines each classification based on public accessibility to the data in that classification:

1. *Confidential*: The public cannot access this data, nor can the subject of the data.
2. *Private*: The public cannot access this data, but the subject of the data can.
3. *Public*: The public and the subject of the date can access this data.

Records can transition from one classification to another, and these privacy classifications form the basis of many policy decisions about government records.

PUBLIC ACCESS TO RECORDS

The general rule, which is established by Minn. Stat. §260B.171,¹² is that records of juvenile delinquency cases are private. They can be shared amongst government agents in statutorily defined situations and can be disseminated to the child's parents and the juveniles themselves when they become adults, (unless doing so would interfere with an ongoing police investigation) but they cannot be accessed by the general public. However, there are three important ways that juvenile records can be made publicly accessible: through extended jurisdiction juvenile prosecution, by certification to adult criminal court, and in certain instances of felony-level offenses.

(1) Extended Jurisdiction Juvenile Prosecution

Generally, juveniles do not receive public court hearings, but they could still be at risk of having their records made public if they are subjected to extended jurisdiction juvenile prosecution (EJJ). An EJJ disposition is a sentencing option for felony-level juvenile offenses (when the juvenile is 14 or older) that blends adult criminal consequences with juvenile court protections. Minn. Stat. §260B.130. Under an EJJ sentence the youth receives a stayed adult prison sentence and is placed on juvenile probation until they turn 21 years old. If the youth successfully completes probation they will retain their juvenile delinquency disposition and avoid an adult criminal conviction which would create a public record.¹³ However, if they fail to successfully complete probation, their case will result in an adult conviction and a public record.

(2) Certification to Adult Criminal Court

A juvenile offense can also lead to a public record if the juvenile case is certified as an adult. Pursuant to Minn. Stat. §260B.125, a court may order that juvenile who was charged with a felony offense that occurred when they were at least 14 years of age be certified as an adult and

¹² See Minn. Stat. §260B.171 subd. 4, relating to juvenile court records, and Minn. Stat. §260 B.171 subd. 5 relating to peace officer records.

¹³ Note that youth who successfully complete EJJ probation will still have a publicly-accessible record if they were 16 or older at the time of the offense. See subdivision three, page 8: Certain Youth Charged with Felony-level offense

tried in criminal court. The effect of adult certification is that jurisdiction for the case is transferred from juvenile court to adult criminal court. The subsequent adult case would generate a public record just like any other criminal case.

(3) Certain Youth Charged with a Felony Offense

If a juvenile is charged with a felony-level offense relating to an incident that occurred when they were 16 or 17 years old, their court proceedings and any physical records of the case will be open to the public. Minn. Stat. §260B.163. This is no small number of youth affected: for example, in 2010, 2,646 felony-level juvenile adjudication petitions involving 16 or 17 years olds were filed in Minnesota courts. Note that even if the case is later dismissed or reduced, the mere fact that the juvenile was charged with a felony-level offense will lead to publicly accessible records.

That said, in 2013 the legislature passed a law intended to provide some protection by amending the statutory language in order to prevent direct public access to juvenile delinquency records maintained in the court's electronic database, Minnesota Court Information System (MNCIS).¹⁴ Under the new law, MNCIS records of juvenile delinquency cases subject to public hearings are only accessible to the public if the prosecutor does not agree to it being private and files a motion requesting either adult certification or extended jurisdiction juvenile, or if the juvenile is adjudicated delinquent for a crime of violence as defined by Minn. Stat. §624.715, subdivision 5 (exempting Chapter 152 drug offenses).¹⁵

As of December 2013, it is unclear whether the court will implement the changes required by the new law. The Supreme Court Advisory Committee on the Rules of Juvenile Delinquency Procedure has recommended that the statute as written not be implemented.¹⁶

RECORDS ACCESSED WITH THE INFORMED CONSENT OF THE SUBJECT

Even records that are classified as private can sometimes be accessed by an employer or landlord if the subject has given his informed consent to do so. Informed consent is typically obtained through a release form signed by the subject of the record. Such forms are a common part of many employment and housing applications.

Both the BCA and the courts are prohibited by statute from releasing private juvenile records to third parties even with informed consent. Minn. Stat. §260B.171; Minn. Stat. §260B.171; Minn. Stat. §299C.095. The statutes allow the courts to release records relating to *public* juvenile cases, whereas the BCA is prevented from releasing *any* juvenile records, even with informed consent. Local law enforcement agencies, however, are not prohibited from releasing juvenile records with consent of the subject. Some local law enforcement agencies have chosen not to release the information even with informed consent, but an informal survey of several Minnesota police

¹⁴ Minn. Stat. §260B.171 subd. 9.

¹⁵ Note that the new law does not apply retroactively to those juvenile records that are currently publicly available on MNCIS

¹⁶ Minn. Sup. Ct. Advisory Comm. on the Rules of Juv. Delinquency Procedure, *Report and Proposed Amendments to the Minnesota Rules of Juvenile Delinquency Procedure*. (Nov. 19, 2013)

departments found that some do release these records to employers and others with informed consent.¹⁷ Due to these varied local policies, the question of whether a youth's record can be accessed by potential employers and landlords may turn solely on the arbitrary factor of where they happened to be arrested

Collateral Consequences of Juvenile Records

The term “collateral consequences” is a catch-all used to describe the barriers that a person might experience due to a juvenile or criminal record. Some collateral consequences are collateral sanctions – government imposed barriers that prevent people with both criminal and juvenile delinquency records from engaging in certain activities. These barriers arise in employment, housing, education, family contexts, and in the exercise of civil rights. They arise out of state and federal laws as well as municipal ordinances, and they govern a wide range of career paths: from practicing medicine, to working at a betting race track, to providing massage therapy. Several of the state's collateral sanctions can be found in Minn. Stat. §609B. Collateral sanctions can often affect people with private juvenile records, as many of the government agencies enforcing these restrictions have access to private juvenile records. It is beyond the scope of this report to catalogue every sanction; instead we will focus on laws which cause frequent problems with individuals with juvenile records. For a more comprehensive resource, see the American Bar Association's National Inventory of Collateral Consequences,¹⁸ the State of Minnesota's licensing information website,¹⁹ and the 2008 legislative, *Criminal Records and Employment in Minnesota*.²⁰

Collateral consequences can also result simply from the stigma associated with involvement in the juvenile justice system, but not due to legal barriers created by the application of law. Such consequences typically result from the general public accessing an individual's criminal or juvenile records. When accessible to the public, juvenile records may create severe difficulty for young adults seeking to obtain employment and housing; the stigma associated with the record can lead employers and landlords to exclude applicants even when there is no reasonable basis to do so.

This section of the report will examine the myriad collateral consequences that arise both from statutory sanctions and from public access to juvenile records.

¹⁷ In 2009, phone calls to a dozen different police departments in both the metro area and greater Minnesota showed that about half of the departments will release juvenile records in response to an informed consent.

¹⁸ National Inventory of the Collateral Consequences of Conviction. American Bar Association. Accessed Sept. 25, 2013. <http://www.abacollateralconsequences.org>.

¹⁹ License Minnesota. The State of Minnesota. Accessed Sept. 25, 2013. <http://mn.gov/elicense/index.jsp>.

²⁰ *Criminal Records and Employment in Minnesota*. 2007 Collateral Sanctions Committee. PDF File. Accessed Sept. 25, 2013, <http://mn.gov/sentencing-guidelines/images/Collateral%2520Sanctions%25202008.pdf>.

EMPLOYMENT CONSEQUENCES

Applies to public juvenile records

Advances in information technology have made it both easy and inexpensive for employers to make heavy use of criminal background screening in their hiring decisions. According to a 2012 survey published by the Society of Human Resources Management,²¹ 89% of employers surveyed conduct criminal history checks for some positions and 68% reported that they run criminal background checks on every position they fill. This is a dramatic increase from 20 years ago when an estimated 40-50% of employers utilized criminal background studies.

Both publicly accessible juvenile records and private records that are released through informed consent will show up on criminal history checks, thus putting the applicant at risk of being denied employment due to incidents that occurred when the applicant was a child. According to studies originally conducted in Milwaukee, and replicated in Minneapolis, the presence of a criminal history more than halves an applicant's chances of receiving a job interview.²²

There are some regulations on an employer's use of these records in the hiring process. For example, employers are prohibited by Minnesota's Ban-the-Box statute from considering criminal history prior to selecting an applicant for an interview or provisional job offer; public sector employers may not consider non-conviction records or cases that have been expunged or pardoned.²³ Federal civil rights law, enforced by the Equal Employment Opportunity Commission (EEOC) and the Minnesota Department of Civil Rights prohibits any employment practice, including some instances of criminal records screening that have a discriminatory effect on applicants or employees of protected classes. It is the position of the EEOC that criminal records screening, while racially neutral, may nonetheless violate the Civil Rights Act because of the disparate impact that the criminal justice system has on minority communities.²⁴ Additionally, employers are protected from liability for hiring someone with a juvenile record by Minn. Stat. §181.981 because they are not criminal convictions.

Despite these regulations, employers are afforded a great deal of discretion in making decisions based on an applicant's criminal or juvenile records. Often this means that otherwise qualified applicants who pose no danger to the employer are shut out of employment opportunities due to overly risk-averse and discriminatory employment practices. This problem is further compounded by the fact that many employers are ill-equipped to fully understand the nuances of juvenile records. For example, an employer may not understand that a juvenile who received a

²¹ Background Checking—The Use of Criminal Background Checks in Hiring Decisions. Society of Human Resources Management. Accessed Sept. 25, 2013.

<http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>.

²² Pager, Devah. *The Mark of a Criminal Record*. PDF file. The University of Chicago, 2003. Accessed Sept. 25, 2013. http://www.princeton.edu/~pager/pager_ajs.pdf. Note that the impact of that record is most profoundly felt by black applicants.

²³ Minn. Stat. §364.021. Effective Jan. 1, 2013.

²⁴ *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*. Equal Employment Opportunity Commission. Accessed Sept. 25, 2013. http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

stay of adjudication²⁵ was never adjudicated delinquent by the court, or that a youth who was adjudicated delinquent does not stand convicted of a criminal offense. Confusion on the part of the employer may lead them to conclude that an applicant is being deceitful by failing to disclose the results of juvenile cases in response to questions about criminal convictions.

HOUSING CONSEQUENCES

Applies to public juvenile records

Like employers, private landlords have almost unfettered discretion in making decisions based on public juvenile records; accordingly, a majority of private landlords do make use of background checks as a screening mechanism for applicants.²⁶ Juvenile records may result in denials of housing applications for individuals with past records and families that include juveniles with recent delinquency cases. Moreover, unlike employers, it is common practice for landlords to charge fees for background checks.

Additionally, families can also lose rental housing and be forced to move due to a child's juvenile delinquency records. In recent years, many private landlords have begun to include supplemental crime free addenda with their rental contracts. These binding lease provisions allow the landlord to terminate the rental agreement and evict the tenant based on the suspicion of criminal activity.

DISPOSITION RECORDS SHARED WITH SCHOOL OFFICIALS

Applies to public and private juvenile records

Another collateral consequence is that records of many juvenile court dispositions are shared with school officials. When a juvenile is adjudicated delinquent of one of a statutorily defined list of delinquencies, the probation officer is required to transmit the delinquency order to either the school district superintendent or principal. The list of offenses includes assaults, criminal sexual conduct, and drug offenses. Furthermore, even offenses that are not listed in 260B.171.3 can end up in the hands of school officials: probation is required to share adjudication orders when the incident occurred on school property. Probation may also do so at their discretion even if the offense did not occur on school property and is not a listed offense.²⁷

²⁵ A stay of adjudication is a disposition available in both juvenile and criminal court wherein the defendant is placed on probation without ever having a judgment of guilty entered against him. Successful completion of probation leads to the case being dismissed.

²⁶ *Tenant screening agencies in the Twin Cities: An overview of tenant screening practices and their impact on renters*. PDF file. HousingLink. 2004. Prepared for the Minnesota Housing Finance Agency and the Fair Housing Implementation Council. Accessed Sept. 25, 2013. http://www.housinglink.org/Files/Tenant_Screening.pdf.

²⁷ Minn. Stat. §260B.171.3 (3)(b).

Once received, the disposition order must be placed in the child’s permanent record, must be shared with school counselors and teachers, and may be shared with other school staff if the principal feels that it is necessary.²⁸

COLLEGE ADMISSIONS

Applies to public juvenile records

Juvenile delinquency history records can also negatively affect a student’s ability to access higher education. A 2010 survey conducted by The Center for Community Alternatives in partnership with the American Association of Collegiate Registrars and Admission Officers found that over seventy percent of reporting colleges collected criminal history as a part of their applications processes.²⁹ Not all of those schools used the record when determining eligibility for admission, but those that did considered it to be a negative factor. Of the colleges that reported collecting criminal history information, the majority neither trained their admissions staff nor had formal written policies to provide direction in how the presence of criminal and juvenile history should guide the admissions decisions. The study also found that applicants with criminal or juvenile delinquency records were at increased risk of being denied.

In addition to creating a barrier to obtaining secondary education in general, juvenile records make it more difficult for students to access top schools. Private and four-year institutions were more likely to collect and consider criminal history information than institutions offering two-year programs.

DEPARTMENT OF HUMAN SERVICES BACKGROUND STUDIES: HEALTH CARE, CHILD CARE AND FOSTER PARENTING

Applies to public and private juvenile records

The Department of Human Services is required by statute to conduct background checks on anyone applying to work or volunteer with children or vulnerable adults in programs licensed by DHS and the Minnesota Department of Health, as well as in unlicensed personal care provider organizations. The background studies are intended to prevent people with criminal or juvenile records from working with populations that require greater protection. DHS conducts more than 270,000 background checks annually for a wide range of positions. These include positions within child care facilities,³⁰ foster parenting,³¹ and many jobs in health care facilities –

²⁸ For example if the principal believes staff needs the information in order to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. Minn. Stat. §121A.75 sub 2.

²⁹ *The Use of Criminal History Records in College Admissions Reconsidered*. PDF file. Center for Community Alternatives. Accessed Sept. 25, 2013. <http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf>.

³⁰ Minn. Stat. §245A.03.

³¹ Minn. Stat. §245A.03.

including positions where the employee is not responsible for providing care but may come into contact with vulnerable individuals (for example: janitorial work in a licensed nursing home).³²

DHS has statutory access to both public and private records held by the BCA, including juvenile arrest and court records when there was an adjudication of delinquency.³³ They may also review arrest records and police reports for incidents that were never brought to court. If DHS determines that the subject of the background check has committed a disqualifying offense, the applicant will be subject to an automatic disqualification.³⁴ A letter will be sent to both the individual and the employer stating that the individual must be immediately removed from the position.

It is important to note that disqualifications are not limited to convictions or adjudications of delinquency. Rather, DHS's determination as to whether a disqualifying offense occurred is governed by a preponderance of the evidence standard.³⁵ This burden of proof is much lower than the standard in criminal or juvenile court of "beyond a reasonable doubt." As such, if DHS determines that it is more likely than not that the behavior occurred, the department is required to disqualify that individual.

The implication of the differing burdens of proof is that a juvenile who is never adjudicated delinquent (perhaps because the judge stayed adjudication of delinquency or because the judge found that there was insufficient evidence to prove the juvenile delinquent beyond a reasonable doubt) could nevertheless be disqualified from working with vulnerable people. DHS may make a preponderance of the evidence determination solely from the information contained in police reports in the absence of a court's determination of guilt.

Minn. Stat. 245C.15 describes which offenses trigger a DHS disqualification. The period of disqualification is determined by the level of the offense: seven years for a misdemeanor, ten years for a gross misdemeanor, fifteen years for less serious felonies, and a permanent bar for more serious felonies. If the disqualification is triggered by a delinquency adjudication, the disqualification period begins on the date of the court order. If, however, the disqualification is based on a preponderance of the evidence determination, the disqualification period begins on the date of the incident. An individual subject to a seven, ten, or fifteen year disqualification can petition DHS to "set-aside" the disqualification and allow them to work despite their past offense (see remedies section on page 26).³⁶ Set-asides are not available to individuals subject to a permanent disqualification.³⁷

The statutory scheme can lead to anomalous results from a plea bargaining perspective. The tiered disqualification periods put a greater emphasis on obtaining a reduced sentence than avoiding being adjudicated delinquent. The reason for the anomaly is that DHS can make a preponderance of the evidence determination even in the absence of a delinquency adjudication,

³² Minn. Stat. §144.057.

³³ Minn. Stat. §299C.095 subd. 1 (b). and Minn. Stat. 299C.10 subd. 1(2).

³⁴ Minn. Stat. §245C.14 .

³⁵ Minn. Stat. §245C.15.

³⁶ Minn. Stat. §245C.22 subd. 4.

³⁷ Minn. Stat. §245C.24 subd. 2.

but for many offenses it is required by statute to downgrade the disqualification period when the defendant receives a reduced-sentence level. In other words, when a juvenile is adjudicated delinquent, DHS looks to the sentence level, not the original charge to determine which disqualification period to apply. The anomaly, then, is that juvenile defendants may be better off being adjudicated delinquent and sentenced at a lower level than they would be if their adjudication had been stayed or if they had been acquitted of the charges.

The effect of this anomaly is especially prominent for youth charged with a serious offense that would trigger a permanent disqualification, since receiving a reduced sentence level would preserve their eligibility for a set-aside, while even a full acquittal in juvenile court would still leave them vulnerable to a preponderance of the evidence determination and a permanent disqualification by DHS. It should be noted that some of the most serious offenses remain permanent disqualifications regardless of the eventual sentencing level.³⁸

SCHOOL EMPLOYEES

Applies to public juvenile records

All public and private schools are required by Minn. Stat. 123B.03 to conduct BCA records checks on all new employees as well as academic and athletic coaches regardless of whether they are getting paid. The information obtained from the BCA would include juvenile records where there was an adjudication of delinquency, including EJJ cases and could be used by the school hiring authority to deny the job application³⁹. In addition to the school's background checks, individuals seeking licensure by the MN board of teachers are subject to a mandatory background check and can be denied licensure due to past criminal and juvenile history data where there was an adjudication of delinquency, including EJJ cases.⁴⁰

PUBLIC HOUSING

Applies to public juvenile records

Legal barriers to housing arise predominantly within public housing programs; certain juvenile offenses bar applicants and their families from taking advantage of government housing assistance.

The United States Department of Housing and Urban Development (HUD) funds state housing authorities, who in turn provide public housing to qualified individuals. In providing these funds, HUD also provides standards defining who qualifies for public housing. Local and municipal housing authorities can adopt these standards within their jurisdictions or they can use HUD standards in developing guidelines specific to their jurisdictions. Cities in Minnesota do both,

³⁸ For example murder, manslaughter, first and second degree assault, criminal sexual contact. Minn. Stat. §245c.15 subd.1.

³⁹ Minn. Stat. §299C.095 subd. 1(b).

⁴⁰ Minn. Stat. §122A.18, subd. 8; *Minn. Admin. R.* §3512.1600; *Minn. Admin. R.* §8710.0900.

with some municipal housing authorities) essentially adopting the HUD standards in their entirety,⁴¹ while others promulgate their own guidelines based on HUD standards.⁴²

Cataloging the rules adopted by each individual municipality is beyond the scope of this report; we will focus on HUD's guidelines and the standards adopted by MPHA.⁴³

HUD guidelines require local housing authorities to disqualify persons or households that include persons:

1. Evicted, within three years, from public housing for drug related activity, unless
 - a. the person completed an approved, supervised drug rehabilitation program, or
 - b. the circumstances that led to the eviction no longer exist
2. Currently engaged in illegal drug use
3. Who may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents due to illegal drug or alcohol use
4. Convicted of manufacturing methamphetamine in federally-assisted housing
5. Required to register, for life, with a state sex offender registration program

HUD guidelines also permit local housing authorities to disqualify persons (or households that include persons) currently or recently engaged in:

1. Drug-related criminal activity
2. Violent criminal activity
3. Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity
4. Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the local housing authority.⁴⁴

Because its language focuses on “criminal activity” as opposed to convictions, the guidelines allow public housing authorities to consider publicly available juvenile delinquency information in making eligibility decisions. Furthermore, because the language in the HUD guidelines is so broad, local housing authorities have considerable discretion in promulgating strict consequences for individuals with juvenile records. For example, MPHA has developed screening guidelines that disqualify individuals based on many types of criminal and juvenile delinquency activity including misdemeanors such as 5th degree assault, disorderly conduct, theft and public urination.⁴⁵

⁴¹ See, for example, the Columbia Heights Housing and Redevelopment Authority.

⁴² See, for example, the Minneapolis Public Housing Authority (MPHA).

⁴³ City officials of other municipalities should be able to provide information on which housing authority controls public housing in their city, and the housing authority will release information about their guidelines upon request.

⁴⁴ 24 C.F.R. § 982.553

⁴⁵ Under *MPHA Statement of Policies 2012/2013 Part II: Requirements for Admission, Part 2, subd. 4E(5)*, before making a decision regarding admission, MPHA will provide a copy of the criminal records to the applicant. The applicant will have an opportunity to contest the accuracy and relevance of the records, before MPHA makes a

PRIVATE HOUSING

Applies to public juvenile records

Local governments are also beginning to regulate private housing by requiring landlords to bar housing or evict tenants that engage in criminal activity. For instance, St. Louis Park has issued a city ordinance requiring all landlords to include a lease clause mandating training for tenants on crime prevention, and authorizing eviction for any crime committed by the tenant, either on or off the property.⁴⁶ Under the ordinance the city police department automatically notifies the landlord if it determines that a tenant was engaged in “criminal activity,” a term broad enough to encompass juvenile as well as adult offenses and arrests that do not lead to charges.

FOSTER HOME PLACEMENT

Applies to public and private juvenile records

A juvenile delinquency adjudication can affect a child’s placement into foster care. Minnesota’s child protection laws create a preference for keeping siblings together when they are placed into foster care. However, delinquency adjudications can frustrate that preference and separate siblings into different homes. This can occur when the sibling who is adjudicated delinquent is deemed to require a more restrictive living situation (such as a group home), or when a no-contact order resulting from the juvenile case prevents the delinquent youth from having contact with their sibling or another person living in the facility.

MILITARY SERVICE

Applies to public juvenile records

All four major branches of the military require disclosure of any criminal offenses including juvenile delinquency adjudications as part of their moral character enlistment standards.⁴⁷ Even records that are subject to an expungement are required to be disclosed.⁴⁸ All felony delinquency adjudications will typically bar entry into military service, and a pattern of misdemeanors can also be a problem. Enlistees can apply for a waiver to overcome their disqualification. During the waiver application process the burden is on the enlistee to demonstrate that a waiver is in the best interest of the particular branch. Both the enlistment standards and the frequency with which disqualifications are waived are subject to change as the military adapts to shifting enlistment needs. At the time of this report, in the fall of 2013, the military was in a draw-down period, making enlistment considerably more difficult for individuals with juvenile and criminal records.

decision.

⁴⁶ *Saint Louis Park, Minn., Code* § 8-331 (2012).

⁴⁷ Code of Federal Regulations Title 32, Ch. 5, § 571.3(c)(2)(i).

⁴⁸ *Id.*

LAW ENFORCEMENT

Applies to public and private juvenile records

A heightened background check is conducted for anyone applying to be licensed as a peace officer. Law enforcement agencies have statutory access to even expunged criminal and juvenile records.⁴⁹ A conviction for any felony-level offense and select misdemeanor offenses will bar employment as a law enforcement official.⁵⁰ Note the definition of “conviction” employed in this context is particularly broad, including any finding of guilt regardless of length of sentence and including stays of imposition, stays of adjudication, continuance for dismissals granted by the court and expunged records⁵¹.

Here, the definition of conviction does not include juvenile delinquency adjudications: juvenile cases that lead to adult certifications and executed EJJ sentences will automatically bar employment as a peace officer, but juvenile dispositions will not. However, even though juvenile records will not create an automatic bar, they will be available for review during the application process and the individual police departments may determine that an applicant is unsuitable based on his juvenile delinquency history. Furthermore, individuals required to register as a predatory offender, regardless of whether or not the requirement arose out of delinquency adjudication, are barred.⁵²

POSSESSION OF FIREARMS

Applies to public and private juvenile records

The right to possess a firearm can be denied under a number of different federal and state statutes based on both juvenile delinquency adjudications and criminal convictions. Under state law, individuals convicted and juveniles adjudicated delinquent for a crime of violence are subject to a lifetime ban on the possession of any type of firearm.⁵³ Additional laws ban firearm possession for any individual *convicted* of any felony offense (not including juvenile adjudications) and any unlawful user of controlled substances (including juveniles adjudicated delinquent of drug offenses).⁵⁴ Various domestic violence-related offenses can also trigger loss of firearm rights under both state and federal law. Finally, federal statutes also apply a lifetime ban on convictions of crimes punishable by more than one year.⁵⁵

Individuals who have lost their right to possess a firearm can petition the court for reinstatement of that right.⁵⁶

⁴⁹ Minn. Stat. §626.87.

⁵⁰ Minn. Admin. R. §6700.0700.

⁵¹ Minn. Admin. R. §6700.0100.

⁵² *Id.*

⁵³ Minn. Stat. §624.713 subd. 1(2). Crimes of violence defined in Minn. Stat. §624.712 subd 5.

⁵⁴ Minn. Stat. §624.713 subd. 10,

⁵⁵ 18 U.S.C. 922.

⁵⁶ See Minn. Stat. §609.165subd. 1 (d).

INTERNATIONAL TRAVEL

Applies to public juvenile records

All foreign nations have their own requirements for issuing a visa for entry into their territories. Canada is among the most restrictive when it comes to allowing foreign nationals with criminal convictions entry.

Juveniles who receive adult criminal sentences, either through an executed EJJ sentence, or from certification to adult court may be deemed inadmissible to enter into Canada under the Canadian Immigration and Refugee Protection Act. Juveniles who are adjudicated delinquent but do not receive adult sentences are not deemed inadmissible and should have no difficulty entering Canada.

Juveniles convicted of trafficking drugs across an international border are ineligible for a passport until they are discharged from their sentence and no longer on probation or parole.

DRIVER'S LICENSE

Applies to public and private juvenile records

Many driving offenses trigger a suspension or revocation of one's driver's license. Examples include driving while intoxicated, no insurance violations, and reckless driving. This consequence is applied regardless of the driver's age.

VOTING RIGHTS

In Minnesota, persons convicted of a felony may not vote until their civil rights have been restored; restoration occurs automatically upon discharge from sentence.⁵⁷ Juveniles who have been convicted in adult court or received an adult conviction as a result of an executed EJJ sentence are ineligible to vote until they have completed their sentence and are discharged from probation or parole.

Juveniles who are adjudicated delinquent but not convicted retain their right to vote upon turning 18. Minn. Stat. §260B.245 governs the effects of all juvenile court proceedings and clearly limits the impact such proceedings can have on an individual's civil liberties. The statute states that "(a) No adjudication upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities imposed by conviction, nor shall any child be deemed a criminal by reason of this adjudication, nor shall this adjudication be deemed a conviction of crime, except as otherwise provided in this section or section 260B.255."

Minnesota Statute §260B.255 clarifies further that a violation of state or local law or ordinance is not a crime when committed by an individual under the age of 18 unless the juvenile court: (1)

⁵⁷ See Minn. Const. art. VII, §1., and Minn. Stat. §609.165, subd. 1 (2010).

had certified the matter to proceed in adult court, (2) transferred the case to adult court under the rules governing juvenile traffic offenders, or (3) “convicts the child as an extended jurisdiction juvenile and subsequently executes the adult sentence.”

These two statutes combined clearly protect juveniles who have been adjudicated delinquent from the loss of liberties and other consequences of adult criminal convictions.

The law is less clear as to whether an EJJ delinquency could be treated as an adult felony conviction for the purpose of disenfranchisement because of language describing an EJJ disposition as a “conviction” in which the juvenile receives a “stayed adult criminal sentence” in both the statutes and rules governing juvenile procedure (see Minn. Stat. §260B.130, subd. 5. and Minn. R. Juv. Proc. §19.01, subd. 2.). That said, there are two additional pieces of language from Minn. Stat. §260B.245 that clarify the legislature’s intent to preserve an EJJ delinquent’s civil right. First, the statute directs that an EJJ “conviction shall be treated the same as an adult felony for the purpose of the Sentencing Guidelines”. The legislative intent here is clear. EJJ convictions are distinct from adult felony convictions and can only be treated as such for specific, statutorily defined purposes. Second, Minn. Stat. §260B.245 states that both the juvenile court disposition and any evidence given by the juvenile are inadmissible as evidence against the juvenile in any other court proceeding. Therefore, unless an EJJ delinquent has their juvenile status revoked under Minn. Stat. §260B.130 subd 5, their EJJ conviction could not be presented as evidence of a felony for the purpose of a voter fraud charge.

IMMIGRATION CONSEQUENCES

Applies to public juvenile records

Non-citizen juveniles can suffer severe immigration consequences from involvement in the juvenile justice system.⁵⁸ Criminal convictions for a variety of offenses can trigger deportation (removal) and inadmissibility (bar to entry or to obtaining immigration benefits while in the United States) as well as denial of naturalization (application for citizenship)⁵⁹. Two major categories of criminal convictions that cause immigration consequences are *aggravated felonies* and *crimes of moral turpitude*.⁶⁰ The immigration term “aggravated felony” comprises a list of crimes that including: any violent crimes that carries a possible sentence of one year or more, theft and burglary with a sentence of one year or more, sexual assault, and drug trafficking.⁶¹ Note that gross misdemeanor convictions in Minnesota can be considered aggravated felonies under federal immigration law. In immigration law, crimes of moral turpitude are crimes that

⁵⁸ *Practice Advisory for Juvenile Defenders Representing Noncitizens*. PDF file. Washington Defender Association’s Immigration Project. Oct. 2011. Accessed Sept. 25, 2013. <http://www.defensenet.org/immigration-project/immigration-resources/Juvenile%20Offender%20Practice%20Guide%20-%20AB%2010-28-11.pdf>.

⁵⁹ This is true for people who have lawful status in the U.S. For people who are undocumented, any interaction with law enforcement (including conviction of CIMT or other crimes) may result in removal proceedings.

⁶⁰ Note that, per Immigration and Nationality Act §212 and §237, there are many other types of criminal convictions that are problematic. E.g. convictions for a controlled substance offense, INA §212a2A1II; INA §237a2B; multiple criminal convictions of any kind where aggregate sentence to confinement 5 years or more, INA §212a2B; conviction for failure to register as sex offender, INA §237a2Av; conviction for certain firearm offenses, INA §237a2C; conviction for a “crime of domestic violence,” of stalking, child abuse, child neglect, child abandonment, INA §237a2E, and Misc. crimes INA §237A2D.

⁶¹ Immigration and Nationality Act § 101 (a)(43).

have an element of malicious intent or inherent depravity. Some examples include theft, fraud, perjury, assault under some circumstances, and prostitution. A crime of moral turpitude will trigger deportation if it carries a possible sentence of a year or more, or if it is the individual's second such offense.⁶²

Juveniles who stand convicted of a crime that falls into either category, due to being certified to adult court, or from having an EJJ sentence executed,⁶³ will likely suffer harsh immigration consequences including long stays in an immigration detention facility and separation from their family through deportation, and ineligibility for future immigration benefits.

For the purposes of immigration law, juvenile delinquency adjudications are not considered "convictions" and do not carry the same consequence as convictions in adult court.⁶⁴

However, juvenile adjudications can trigger inadmissibility and deportability, not because of the adjudication itself, but instead based on evidence of prohibited conduct that can be established by admissions that were made in juvenile court. Such "conduct-based" grounds for deportation and inadmissibility can arise from admissions that establish a reasonable basis to believe that the juvenile has been involved in illegal drug trafficking,⁶⁵ prostitution,⁶⁶ is a drug abuser or addict,⁶⁷ has violated a domestic violence no-contact order or order for protection,⁶⁸ or has falsely claimed to be a U.S. citizen.⁶⁹ Furthermore, applications for immigration benefits and requests for relief from removal almost always involve a discretionary decision made by the federal immigration judge or officer. A juvenile record may weigh against a youth's request for relief even where the juvenile delinquency adjudication is not itself the grounds for the immigration consequence.

Finally, there is one immigration consequence of juvenile records that can apply even to youths who are citizens of the United States. Under the Federal Adam Walsh Act, anyone over the age of 14 who has been convicted or adjudicated delinquent of a crime that qualifies as aggravated sexual abuse is permanently barred from petitioning to bring family members to the United States.⁷⁰

⁶² Immigration and Nationality Act § 212(a)(2)(a)(i).

⁶³ It is possible, though unclear because there is no published immigration court decision on point, that even without execution of adult EJJ sentence, an EJJ adjudication could count as a conviction for immigration purposes.

⁶⁴ See e.g., *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000)(en banc).

⁶⁵ INA § 212(a)(2)(C).

⁶⁶ INA § 212(a)(2)(D).

⁶⁷ INA § 212(a)(1)(A)(vi); INA § 212(a)(1)(A)(iii).

⁶⁸ INA § 237(a)(2)(E)(ii).

⁶⁹ INA § 212(a)(6)(C)(ii); INA § 237(a)(3)(D). Note that some of these categories are relevant to inadmissibility, some to deportability and some to both.

⁷⁰ 8 U.S.C. § 1154(a)(1)(A)(viii), 1154 (a)(1)(B)(i)(I).

Collateral Effects Relating to Further Involvement in the Criminal Justice System

Juvenile delinquency adjudications can lead to various consequences for individuals who are later charged with adult crimes.

CRIMINAL HISTORY POINTS

When an individual is convicted of a felony in Minnesota, their sentence is largely determined by the Minnesota Sentencing Guidelines. The guidelines take into account the individual's past criminal history and the nature of the new offense by assigning criminal history points in order to determine a presumptive sentence. Sentencing judges typically follow the guidelines sentence, although they may depart, either upward or downward, if they find cause to do so.

Prior juvenile delinquency adjudications for felony offenses that were committed after turning fourteen will be used to calculate the criminal history score for anyone sentenced for a felony offense committed prior to their twenty-eighth birthday.⁷¹ Typically an offender will only receive one criminal history point for prior juvenile delinquency adjudications. There is an exception, however, if an offender had multiple adjudications and the additional offense was so serious that it would have triggered a presumptive commitment to prison regardless of criminal history score had it been committed by an adult.⁷²

ENHANCEMENT

Under Minnesota law, certain offenses that would otherwise be misdemeanors can be enhanced to gross misdemeanors or even felonies based on past convictions. Examples of enhanceable offenses include assault,⁷³ domestic assault,⁷⁴ and driving while intoxicated.⁷⁵ The statutes defining enhanceable offenses provide that a subsequent offense can be enhanced based on either an adult conviction or an adjudication of delinquency.

DNA COLLECTION

Under Minn. Stat. §609.117 courts are required to order certain offenders to provide a biological specimen for the purpose of collecting DNA to be analyzed and stored by the Bureau of Criminal Apprehension to help identify the offender if they ever commit another crime. The statute applies to juveniles who have been petitioned for committing or attempting to commit a felony level offense and are subsequently adjudicated delinquent of the felony or any offense arising out of the same set of circumstances.

⁷¹ Minn. Stat. § 299C.095.

⁷² Minn. Sentencing Guidelines §2.B.4.

⁷³ Minn. Stat. §609.224 subd. 2.

⁷⁴ Minn. Stat. §609.2242 subd. 2.; Minn. Stat. §609.2242 subd. 4.

⁷⁵ Minn. Stat. §169A.095 defining aggravating factors for DWI offenses.

SUBSEQUENT OFFENSES (BAIL, DIVERSION ELIGIBILITY, PLEA BARGAINING)

Juvenile delinquency adjudications that are part of the public record are easily obtained by court officials, judges and prosecutors and frequently affect discretionary decisions made through the criminal process. For example public delinquency records will be included in a bail study prepared for the court to assist judges in deciding whether to release a detained suspect on their own recognizance or impose a bail requirement. Prior juvenile offenses may make the judge more likely to impose a bail restriction. For many indigent defendants, any amount of bail may pose an insurmountable barrier to release, forcing them to remain in custody while their case is pending. Defendants who are held in custody often face considerable pressure to accept a plea bargain, even if they may be innocent, because they are cut off from resources that would help them prepare for trial and also because an early plea can often secure their immediate release.

Past juvenile history is also taken into consideration by prosecutors during the plea negotiation process. A delinquency adjudication may make it substantially more difficult for a defendant to negotiate a lenient sentence and may make a defendant ineligible for diversionary programs designed to help low risk offenders avoid the long term consequences of a criminal conviction.

Predatory Offender Registration Applied to Juveniles

Minn. Stat. §243.166 governs the registration of predatory offenders and applies equally to adult convictions and juvenile adjudications for certain offenses enumerated in the statute.

“When a person who is required to register . . . is sentenced or becomes subject to a juvenile court disposition order, the court shall tell the person of the duty to register under this section and that, if the person fails to comply with the registration requirements, information about the offender may be made available to the public through electronic, computerized, or other accessible means.”⁷⁶

The statute explains that the person required to register, whether they are an adult or juvenile, is responsible for registering with their corrections agent or the local law enforcement authority, and is subject to the strict requirements of the statute.

A juvenile will be required to register if they are convicted or adjudicated delinquent of a triggering offense, or if they are charged or petitioned with such an offense and convicted of any other offense arising out of the same set of circumstances. Some examples of offenses that trigger registration include: murder, kidnapping, first through fifth degree criminal sexual conduct, felony-level indecent exposure, solicitation of a minor, possession of child pornography, and false imprisonment.

⁷⁶ Minn. Stat. §243.166, subd. 2.

Note that judges have no discretion as to whether or not a juvenile who is adjudicated delinquent for a listed offense is required to register. The registration requirement flows almost entirely from the prosecutor's charging discretion and whether or not the juvenile is adjudicated delinquent.

Furthermore, because registration cannot be avoided by pleading to a lesser offense, the only plea bargaining/sentencing option available in situations where the parties want to avoid a registration requirement is to stay adjudication of delinquency. This is problematic because the Minn. Stat. §260B.198 subd.7 limits a juvenile court's probation jurisdiction to six months after adjudication is stayed⁷⁷. Under such circumstances it is very difficult for the court to both protect the juvenile's long term interest in avoiding registration while also ensuring that the juvenile receives sufficient supervision and rehabilitative programming.

PREDATORY OFFENDER REGISTRATION DATA

Predatory offender registration status for both adults and juveniles is private data, only to be used for law enforcement and corrections purposes. Minn. Stat. §243.166, subd. 7. An exception to this rule exists though. When a registered offender, who is 16 years of age or older is not in compliance with the law's reporting requirements, the BCA may published that individual's identity and non-compliance status on its website. Minn. Stat. §243.166, subd. 7a. Also, juveniles and adults must disclose their registration status when being admitted to a health care facility and the law enforcement authority then must provide a fact sheet to the administrator of the health care facility containing the name and physical description of the offender, the offender's conviction history, the risk level classification assigned to the offender, and the profile of likely victims, if any. Minn. Stat. §243.166, subd. 4b.

Like adults, juveniles may be required to register for 10 years or life depending upon the nature of the offense. Minn. Stat. §243.166, subd. 6d.

IMPACT OF PREDATORY OFFENDER REGISTRATION ON JUVENILES

The number of juveniles currently (as of July 2012) registered as predatory offenders in Minnesota:

- 196 (of 16,951) juveniles (juvenile in Minnesota is defined as 18 and under) are on the Minnesota predatory offender registry.

The number of adults on the registry because of their juvenile records:

- 2,354 (almost 14%) on the registry committed their registration offense as a juvenile (Minnesota began registering juveniles on July 1, 1994).

The number of juveniles with public records because of a failure to register:

- 13 (public information includes noncompliant registrants that are at least 16 years of age and have been noncompliant with registration requirements for 30 days or longer).

⁷⁷ See *In re Welfare of M.J.M.*, 766 N.W.2d 360 (Minn. App. 2009).

If a person required to register is subsequently incarcerated following a conviction for a new offense or following a revocation of probation, supervised release, or conditional release for any offense, the person shall continue to register until ten years have elapsed since the person was last released from incarceration or until the person's probation, supervised release, or conditional release period expires, whichever occurs later. Minn. Stat. §243.166, subd. 6d.

When a person required to register knowingly violates their registration or intentionally provides false information, they are guilty of a felony, regardless of whether they were registered as an adult or juvenile. Minn. Stat. §243.166, subd. 5. Thus juveniles who have private juvenile delinquency records that require them to register for 10 years or more are at risk of obtaining an adult criminal conviction carrying a public record that will brand them as a predatory offender simply by failing to be diligent about their registration requirements, regardless of whether they ever commit a subsequent predatory offense.

NOTICE AND DISCLOSURE

Minnesota Statutes §244.052 governs disclosure of information to the public about predatory offenders. The statute specifically *excludes* juveniles from the definition of “predatory offender” and “offender” for the purposes of public notice: “The terms do not include persons required to register based solely on a delinquency adjudication.” Minn. Stat. §244.052, subd. 1(5). Therefore, the statute’s requirement that law enforcement disclose “any information regarding the offender contained in the report . . . that is relevant and necessary to protect the public and to counteract the offender’s dangerousness” does not apply to persons registered based on a juvenile adjudication. Minn. Stat. §244.052, subd. 4(a).

Based on these two statutes, juveniles are subject to the same predatory offender registration requirements as adults and to the same consequences for failure to comply with the registration requirements as adults (criminal felony charge and information made public if over 16 years old), under Minn. Stat. §243.166. But juveniles and adults who were registered as juveniles are exempt from the public disclosure requirements applied to risk level I, II, and III adult offenders, under Minn. Stat. §244.052. It should be noted that while juvenile predatory offender registration is private information in Minnesota, that is not the case in all states. A juvenile who is required to register *privately* in Minnesota will likely be required to register *publicly* should they move to a state such information is public.

Remedies

There are a few remedies to the barriers frequently experienced by individuals with juvenile records. Often these remedies do not offer complete relief to those experiencing the burdens of a juvenile record, but they can make a difference. This section will discuss the three most common legal remedies: expungements, DHS/agency appeals, and pardons.

EXPUNGEMENTS

In Minnesota, expungement allows for the sealing of government records so that they are not accessible by most background checks. There are two basic types of expungement: those derived from a statutory basis, and those granted under the courts' inherent authority to control its own records.

INHERENT AUTHORITY EXPUNGEMENT

It is settled law that courts have the authority to seal judicial branch records because it is within their inherent authority to control records that the court creates.⁷⁸ Absent statutory authority to do so, however, courts generally lack the authority to seal records that are held by executive branch agencies such as the BCA and DHS.⁷⁹ Thus, when granting an expungement based on inherent authority, courts are limited to issuing a partial remedy sealing only judicial branch records while leaving executive branch records accessible.⁸⁰

In order to succeed with an inherent authority expungement, a petitioner must show that the benefit they will receive from sealing the record outweighs the detriment to society of doing so (which is typically a combination of the financial cost of enforcing an expungement order and the public's safety interest in accessing the record).⁸¹

STATUTORY EXPUNGEMENT

There are two statutory expungement remedies that are applicable to juvenile delinquency and juvenile delinquency cases. For the court to grant an expungement under either statutory authority, the petitioner must prevail under a burden vs. benefit balancing test that is similar to that found in inherent authority expungement law (see above).⁸²

⁷⁸ *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981).

⁷⁹ *State v. M.D.T.*, No. A11-1285 (Minn. filed May 22, 2013).

⁸⁰ Note that *State v. M.D.T.* overturned a lower court decision granting expungement of executive branch records of a case that resulted in a stay of imposition and a misdemeanor-level conviction. It remains an undecided issue whether the courts inherent authority allows for an executive branch expungement for cases that did not result in a conviction, such as stays of adjudication. *State v. M.D.T.* can also be distinguished for conviction records that are not public under the Minn. Stat. §13.87 subd. 1 (b).

⁸¹ *State v. H.A.*, 716 NW 2d 360 (Minn. App. 2006).

⁸² *In The Matter of Welfare of J.J.P.* (Minn. 2013).

Minn. Stat. §609A.02 subd. 2 allows the court to seal conviction records for cases that were certified to adult court, though the statute is unclear as to whether it allows the court to seal records held by executive branch agencies.⁸³

For cases that remained in juvenile court, petitioners can file for expungement under Minn. Stat. §260B.198, subd. 6, which allows the court to “expunge adjudication of delinquency at any time that it deems advisable”. This vague language was recently interpreted by the Minnesota Supreme Court in the case of *In the Matter of the Welfare of. J.J.P.* Here the Court clarified the appropriate balancing test and held that the statute allows for the sealing of both judicial and executive branch records while at the same time narrowly construing which specific part of the juvenile’s file could be sealed. The Court held that only the order adjudicating the juvenile delinquent could be sealed. The remainder of any executive branch agency’s file, such as the arrest record and the delinquency petition (the charging document) are beyond the court’s authority to seal. Because it is unclear how the BCA and DHS will treat what remains of a juvenile record after it is subject to an expungement order under *J.J.P.*, it is unclear whether 260B.198 expungements offer much of a remedy at all.

DHS RECONSIDERATION, SET ASIDE, AND OTHER LICENSING APPEALS

Individuals subject to a DHS disqualification due to any criminal record or delinquency adjudication have a few avenues of relief that can be sought through DHS itself. First, if the disqualification is based on a preponderance of the evidence determination, the disqualified individual can challenge the evidence upon which DHS has determined that the disqualifying incident occurred. The disqualified individual must write to DHS to request a reconsideration of the preponderance determination based upon their explanation of the events. If DHS maintains their initial position, the disqualified individual may request a fact-finding hearing. At the hearing, both parties present evidence to an administrative law judge. If DHS cannot prove by a preponderance of the evidence that the incident occurred, the disqualification will be rescinded.

So long as an individual is not subject to a permanent disqualification, they may request that DHS set aside their disqualification. In order to obtain a set-aside the disqualified individual must make a written request explaining why they are not a danger to work in that particular position. If, based on evidence of rehabilitation and an explanation of the offense, the Commissioner is convinced that the individual is not a threat in the given position, they will be granted the set-aside and allowed to return to work.

PARDONS

Pursuant to Minn. Stat. §638.02, the Board of Pardons, which consists of the Governor, the chief justice of the Supreme Court, and the attorney general “may grant pardons and reprieves and commute the sentence of any person convicted of any offense against the laws of the state.”

⁸³ Compare Minn. Stat. §609A.02 subd. 2 with Minn. Stat. §609A.02 subd. 3 which allows the court to seal records of cases that were resolved in the petitioners favor and clearly provides for the sealing of arrest records held by executive branch agencies.

Because they are not criminal convictions, juvenile delinquency adjudications are not eligible to be pardoned.⁸⁴

Individuals with adult convictions stemming from juvenile cases may seek a pardon extraordinary from the Board of Pardons. If granted, a pardon extraordinary has the effect of setting aside and nullifying the conviction and purging the person of it. The pardoned individual shall never after be required to disclose the conviction at any time or place other than in a judicial proceeding or as a part of the licensing process for peace officers. Pardons, however, do not seal records. All records of the case remain public, including the new pardon order.

⁸⁴ Minn. Stat. § 638.01.